

130278

# 1941 Supplement

To

# Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by  
the  
Publisher's  
Editorial Staff

*Minnesota State Law Library  
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

regular course of proceedings, he may, at any time after the filing of the petition for condemnation, file with the court a certificate of taking, describing the land and declaring that the same is taken for the purposes herein authorized. At the time of filing such certificate he shall deposit with the clerk of the court such sum of money as the court may approve to secure payment of the final award for the land to the person or persons entitled thereto. The court's approval of the amount of the deposit shall be indorsed upon the certificate of taking. A certified copy of such certificate and indorsement shall be recorded with the register of deeds. Thereupon title to the land described in the certificate shall become vested in the state, and the adjutant general may take possession thereof in behalf of the state.

Subdivision 2. The final amount of the award shall bear interest at the rate provided by law from the time of the filing of the certificate of taking, except such sum as may be certified for immediate payment as hereinafter provided.

Subdivision 3. The adjutant general shall file with every such deposit a separate certificate stating the amount which he deems to be just compensation for the land taken and authorizing immediate payment of such amount under the order of the court. After the filing of such certificate no interest shall be allowed upon that part of the award represented by the amount so certified. Upon application of any party interested and upon notice and hearing as in case of distribution of an award paid into court, the court shall order the amount so certified by the adjutant general to be paid over to the person or persons entitled to compensation for the land taken according to their respective interests. Every such payment shall be applied and credited on the award.

Subdivision 4. Upon the determination of the final award any amount thereof not already paid as hereinbefore provided shall be paid from the amount deposited hereunder upon like proceedings as in case of an award paid into court. Any deficiency shall be payable as in other cases of awards.

Subdivision 5. The provisions of this section shall not preclude the application of any other provision of law which may be applicable in the premises. (Act Apr. 28, 1941, c. 496, §7.)

**2517-23. Lease to the United States.**—The adjutant general, with the approval of the executive council, may lease any lands now owned or hereafter acquired by the state for military or naval training purposes, including the military training center at Camp Ripley, or any part thereof, to the United States for military or naval training purposes during such times and upon such terms as they deem proper, provided, that no lease shall be made for a term longer than 20 years, and sufficient facilities at said training center shall be reserved for the maintenance and field training of the national guard of the state. (Act Apr. 28, 1941, c. 496, §8.)

**2517-24. Requisition of tax forfeited land—approval—Lease—Relief from tax trust—Reversion to original status—Incidental expenses.**—

Subdivision 1. The adjutant general, with the approval of the executive council, may requisition for military or naval training purposes any tax-forfeited land in the state or any state land in the custody or under the control of the commissioner of conservation or any agency of the department of conservation, subject to the conditions hereinafter prescribed. Such requisition shall be made by filing a certificate thereof executed by the adjutant general, together with a certified copy of the resolution of the executive council approving the same, as follows:

(a) With the county auditor of the county in which the land is situated in the case of tax-forfeited land held subject to any control or authority of the county board;

(b) With the officer having custody of the state land records in the department of conservation in the case of any tax-forfeited land or other state land not subject to any control or authority of a county board.

Subdivision 2. No such requisition shall be made in the case of any state land which has been designated or set apart for any specific public use without the approval of the commissioner of conservation.

Subdivision 3. No such requisition shall be made in the case of any tax-forfeited land within the limits of any city or village without the approval of the governing body thereof.

Subdivision 4. Land so requisitioned may be leased to the United States for military or naval training purposes as hereinbefore provided.

Subdivision 5. Land so requisitioned, so long as used by the state or by the United States for military or naval training purposes, shall be relieved from any trust in favor of any taxing district and from any control or authority of any other public agency for any other purposes. In case the use of such land for military or naval training purposes should cease it shall revert to its status immediately prior to being requisitioned for such purposes, and shall be subject to all the conditions and incidents attached to such status.

Subdivision 6. Expenses incident to the requisitioning of land for military or naval training purposes hereunder, to the leasing of such land to the United States, and to proceedings to perfect the title to such land, if necessary, shall be payable from the appropriations hereinbefore made for acquisition of land. (Act Apr. 28, 1941, c. 496, §9.)

**2517-25. Assurance of military use.**—No land or lands may be acquired, requisitioned or leased, nor may any other powers be exercised under this act unless and until the executive council has received reasonable assurance from the duly authorized representative or representatives of the federal government that such land or lands are to be used solely for military purposes. (Act Apr. 28, 1941, c. 496, §10.)

## CHAPTER 13

### Roads

#### GENERAL HIGHWAY ACT

##### 2542. Scope of act.

4. "Town roads."  
Op. Atty. Gen., (642a-12), April 2, 1940; note under § 2552.

##### 2543. "Road" and "Highway" defined.

Op. Atty. Gen., (642a-12), April 2, 1940; note under § 2552.

##### 2551. County roads.

Towns and counties, being charged with highway construction and maintenance, are liable in damages to prop-

erty owners if and when such owners' property rights are invaded, to protect owners against illegal exercise of power of eminent domain. *Westerson v. S.*, 291NW900. See Dun. Dig. 8475.

As a general rule counties are not liable for negligent acts of their employees committed in exercise of duties of a governmental nature, such as grading a road. Op. Atty. Gen. (844c-5), March 7, 1940.

Fact that county approved plat does not make it liable for maintenance of highways dedicated. Op. Atty. Gen. (377b-10h), July 29, 1940.

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

**2552. Town roads.**

Cutting weeds or grass along town roads. Laws 1941, c. 246.

Where facts pleaded fail to show any excuse for a delay of more than 62 years in bringing mandamus to open and grade a township road, laches appears as a matter of law, for equity aids the vigilant, and not the negligent. *Sinell v. T.*, 289NW44. See Dun. Dig. 8459.

Where county takes an easement for purpose of building a county aid road, stone taken from the right-of-way must be used as a part of the construction of this particular piece of road. Op. Atty. Gen. (377a-8(a)), Nov. 22, 1939.

A platted development on the edge of a lake in an unincorporated area is entitled to have town repair dedicated road and bridges across canals built for benefit of lot owners. Op. Atty. Gen., (642a-12), April 2, 1940.

A town officer is not personally liable for a negligent failure to repair bridges. *Id.*

Township was not liable for injuries to passenger in motor vehicle caused by a stump in middle of township road pushed up by action of frost and unknown to town board, road having not been extensively travelled for years and very little maintenance having been done because of lack of funds. Op. Atty. Gen., (844h), May 13, 1940.

Town board must maintain dedicated highways when wishes to use them. Op. Atty. Gen. (377b-10h), July 29, 1940.

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

Landowners cannot be compelled to mow grass and weeds on township roads, law being limited to noxious weeds. Op. Atty. Gen., (322g), Feb. 26, 1941.

**2553. Commissioner of highways.**

(4). Commissioner of highways could reduce hourly compensation of bridge worker following passage of State Civil Service Act and prior to approval by Commission of Administration and Finance of Wage Schedules. *State v. Hoffman*, 296NW24.

**2554. Powers of Commissioner of Highways.—**

Subdivisions 1 to 5. \* \* \* \* \*

Subdivision 6. The commissioner of highways may conduct the work or any part thereof, incidental to the construction and maintenance of the trunk highways by labor employed therefor or by contract. In cases of construction work, the commissioner of highways shall first advertise for bids for contracts and if no satisfactory bids are received, he shall have the right to reject all bids and readvertise or do the work by labor employed therefor. When work is to be let under contract he shall publish a notice to the effect, for three successive weeks prior to the date such bids are to be received, in such local newspaper or other periodicals as may be deemed advisable, provided that in case of emergency requiring immediate action, contract may be awarded without published notice. Emergency shall be defined as the doing of such work on the highways of the State of Minnesota as is necessary for immediate action in order to maintain existing highways in a passable condition. Provided, no emergencies shall be declared to exist except upon the written authority of the highway commissioner or his deputy. And provided further, that where relief labor is employed, payable out of federal funds in the construction or reconstruction of trunk highways, and where the state is the sponsor for such projects, also necessitating the use of trunk highway funds in order to complete such construction or reconstruction, the commissioner of highways is authorized to furnish supervision, equipment, equipment operators, materials, and such labor as is necessary therefor. (As amended Act Apr. 22, 1941, c. 369, §1.)

Subdivisions 7 to 16. \* \* \* \* \*

Subdivision 17. Repealed.

Subdivision 18. (a) The commissioner of highways is hereby authorized to employ and designate not to exceed 126 persons to enforce the provisions of the laws relating to the protection of and use of trunk highways, who shall have upon all trunk highways the same powers with respect to the enforcement of laws relating to crime, as sheriffs, constables, and police officers have within their respective jurisdictions, so far as may be necessary for the protection of life and property upon such trunk highways. Under instructions and regulations of the commissioner of high-

ways, said employees shall co-operate with all sheriffs and other police officers, and to that end are authorized to exercise the powers herein conferred upon all trunk highways and, for the purpose of continuing pursuit from such trunk highways of offenders thereon, upon all public highways connecting and traversing such trunk highways, provided that said employees shall have no power or authority in connection with strikes or industrial disputes. Employees thus employed and designated shall subscribe an oath and furnish a bond running to the State of Minnesota, said bond to be approved and filed in the office of the Secretary of State.

(b) All fines, from traffic law violations, collected from persons apprehended or arrested by such employees, shall be paid into the state treasury and shall be credited to a separate fund hereby established for that purpose. Out of such fund shall first be paid to counties all costs and expenses incurred by them in the prosecution and punishment of persons so arrested and for which such counties have not been reimbursed by the payment of such costs and expenses by the person prosecuted, and so much of said fund as shall be necessary for the making of such reimbursement is hereby appropriated therefor. Such payment shall be made by the state treasurer upon the claim of the county verified by the county auditor. On the first day of each calendar month the money remaining in such fund shall be credited to that part of the trunk highway fund which is set apart for maintenance purpose; and so much of said maintenance fund as shall be necessary for the salaries and maintenance of such employees is hereby appropriated for that purpose.

(c) Each such employee shall receive a salary of not less than \$150.00 per month and shall receive an annual raise of \$5.00 per month for each succeeding year of employment, such term of employment to be computed from commencement of employment by such individual employees, except that the salary of no employee shall exceed the sum of \$180.00 per month, and in addition thereto, each such individual employee shall be paid not less than \$1.00 per day for subsistence while in the performance of his duty. Each one of not to exceed eight assistant supervisors shall receive a salary of not less than \$180.00 per month and shall receive an annual raise of \$5.00 per month for each succeeding year of service, the term of employment of such assistant supervisors to be computed from commencement of employment of such individual assistant supervisor, except that the salary of no such assistant supervisor shall exceed the sum of \$2,400 per year, and in addition thereto, each such individual assistant supervisor shall be paid not less than \$1.00 per day for subsistence while in the performance of his duty. The salary of one chief supervisor shall be in such amounts as may be fixed by the commissioner of highways, but not to exceed \$4,000 per year. (As amended Act Apr. 10, 1941, c. 175, §1.)

Subdivision 19. \* \* \* \* \*

Subdivision 20. Repealed.

Subdivision 21. \* \* \* \* \*

Where road was established as Elwell Highway, under which abutting owners paid one-eighth of original construction, township one-eighth, county one-fourth, and state one-half, and thereafter it was designated as a Trunk Highway and later changed so that 6 miles was abandoned as Trunk Highway, such part of highway abandoned as Trunk Highway reverted to its original status, and no one has any vested right to require the state to maintain it further. Op. Atty. Gen. (229-K-4), July 14, 1940.

Sub. 1. Sections 357 and 311 of Title 25, Mason's United States Code Annotated, offer two methods for acquisition by state of land for a public highway, and hence in a proceeding by the state of Minnesota pursuant to the former section to condemn land allotted in severalty to Indians for highway purposes consent of Secretary of Interior was not necessary. *U. S. v. State of Minnesota*, (CCA8), 113F(2d)770.

Proceeding to condemn a right of way for highway purposes may be abandoned and discontinued by state in exercise of its legislative function at any time prior to making of an award where state has not entered into

possession of the property or appropriated it to its purposes. *State v. Appleton*, 294NW418. See Dun. Dig. 3091. "Material in place" in a highway contract means that material is hauled and put in place at a unit price per cubic yard. *State v. Elsberg*, 295NW913. See Dun. Dig. 8452.

**Sub. 4.**

State Highway Department and City of Minneapolis could enter into an agreement relative to department paying for highway improvement within city upon a street designated by the commissioner as a temporary trunk highway. Op. Atty. Gen., (229a), Feb. 8, 1941.

**Sub. 6.**

Amended. Laws 1941, c. 369.

**Sub. 17. Repealed.**

Repealed. Laws 1941, c. 456.

Time for application for arbitration begins to run from completion of "work" and not from date of final estimate or acceptance. *State v. Wm. O'Neil Sons Co.*, 296NW7. See Dun. Dig. 8452.

**Sub. 18.**

Amended. Laws 1941, c. 175.

State highway patrolmen are not eligible to be appointed deputy sheriffs. Op. Atty. Gen. (229a-7), Sept. 27, 1939.

**(18)(a).**

Inmates of a National Youth Administration Camp while driving government trucks are not employees the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

Section prescribes a limitation only on number of patrolmen, which number after Jan. 1, 1941, may not exceed 116, and does not limit number of additional persons, such as supervisors, assistant supervisors, radio operators or other employees not in Highway Patrol. Op. Atty. Gen., (229A-7), Mar. 4, 1941.

**(18)(b).**

Highway fines do not arise under or by virtue of Constitution article 16, and fund created by fines is subject to legislative control and may be used for same purposes for which constitutional fund is devoted, or put to use for some other purpose, such as is provided by Laws 1939, c. 420, relating to ascertainment of damages caused by construction of improvement of trunk highway. *Westerson v. S.*, 291NW900. See Dun. Dig. 8452.

Each week clerk is to file with city treasurer a weekly report and pay over all sums collected from fines, except those he is entitled to retain as part of his compensation, and it is then duty of city treasurer to pay over such fines to state or county, whichever is entitled thereto, and there is no requirement that clerk of municipal court shall pay such sum into either county or state treasury. Op. Atty. Gen. (199B-4), Aug. 12, 1940.

Defendant and court having accepted legality of arrest on a county highway by a state highway patrolman, fine should be turned into state treasury and not be retained by county. Op. Atty. Gen. (199B-4), Aug. 16, 1940.

This section requires county to be reimbursed for clerk's fees and prisoner's board when not paid by individual prosecuted. Op. Atty. Gen. (989a-6), Oct. 4, 1940.

If a prisoner having elected to serve his sentence rather than pay fine imposed, later changes his mind and pays his fine, county cannot charge meals to him for number of days he was fed in jail as a condition of his release. Op. Atty. Gen. (559A), Dec. 21, 1940.

When person is held in village jail pending trial or arraignment for a violation charged under state law by local officers, expense of keep should be paid by county board upon a verified claim from the village, and board could then seek reimbursement from state treasurer. Id.

**Sub. 20. Repealed.**

Repealed. Laws 1941, c. 345.

**2554-¼. Actions against state-waiver of immunity—Jurisdiction of courts.**—Whenever a controversy arises out of any contract for the construction or repair of state trunk highways entered into by the commissioner of highways or by his authority, in respect to which controversy the party would be entitled to redress against the state, either in a court of law or equity, if the state were suable, where no claim against the state has heretofore been made under Mason's Minnesota Statutes 1927, Section 2554, Subsection 17, the state hereby waives immunity from suit in connection with such controversy and hereby confers jurisdiction on the district courts of the state to hear and try out such controversy in the manner provided for the trial of causes in said district courts. (Act Apr. 26, 1941, c. 456, §1.)

**2554-¼ a. Same—Time for commencement of action.**—No such action shall be maintained under Section 1 hereof unless commenced within 90 days after the plaintiff has been furnished by the state with a final estimate under his contract, or, at the election

of the plaintiff, within six months after the work provided for in said contract shall have been in all things completed. (Act Apr. 26, 1941, c. 456, §2.)

**2554-¼ b. Same—Venue.**—Such action shall be brought, at the election of the plaintiff, in the district court of Ramsey County, or in the district court of the county where a major portion of the contract is performed, or in the district court of the county in which the plaintiff resides, or, if there be several plaintiffs residing in different counties, then in the district court of the county of the residence of any one of them. The action shall be commenced by filing a complaint with the clerk of said court and serving summons and copy of said complaint upon the attorney general of the state at the state capitol at St. Paul. The state shall have 40 days from the date of such service within which to serve an answer upon the plaintiff; and thereafter the case shall proceed in the same manner as other actions at law in said court. (Act Apr. 26, 1941, c. 456, §3.)

**2554-¼ c. Same—Appeal.**—An appeal from any final order of judgment in such action shall lie to the Supreme Court of the state in the same manner as appeals in ordinary civil actions. (Act Apr. 26, 1941, c. 456, §4.)

**2554-¼ d. Repealer.**—That Mason's Minnesota Statutes of 1927, Section 2554, Subsection 17, is hereby repealed, subject to the right of persons having actions or proceedings now pending thereunder, to have such actions and proceedings heard, considered and decided in accordance therewith. (Act Apr. 26, 1941, c. 456, §5.)

**2554-¼ e. Application of act.**—This act shall not apply to or affect any action or proceeding heretofore duly commenced under Mason's Minnesota Statutes of 1927, Section 2554, Subsection 17, and pending at the date of the passage of this act. (Act Apr. 26, 1941, c. 456, §6.)

**2554-¼ f. Co-operation with federal government or departments.**—The commissioner of highways is authorized to co-operate with the government of the United States and any agency or department thereof in the construction, improvement, and maintenance of roads and bridges in the State of Minnesota and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such roads and bridges. (Act Apr. 21, 1941, c. 345, §1.)

**2554-¼ g. Same—Acceptance of moneys.**—The commissioner of highways is authorized to accept federal moneys and other moneys either public or private, for and in behalf of the State of Minnesota or any governmental subdivision thereof, for the construction, improvement, or maintenance of roads and bridges upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and is authorized to act as an agent of any governmental subdivision of the State of Minnesota upon the request of such subdivision in accepting such moneys in its behalf for road or bridge purposes, in acquiring right of way therefor, and in contracting for the construction, improvement, or maintenance of roads or bridges financed either in whole or in part by federal moneys, and the governing body of any such subdivision is authorized to designate the commissioner of highways as its agent for such purposes and to enter into an agreement with him prescribing the terms and conditions of such agency in accordance with Federal laws, rules, and regulations, and with this act. (Act Apr. 21, 1941, c. 345, §2.)

**2554-¼ h. Same—Contracts—Laws governing.**—All contracts for the construction, improvement, or maintenance of roads or bridges made by the commissioner of highways as the agent of any governmental sub-

division shall be made pursuant to the laws of the State of Minnesota governing the making of contracts for the construction, improvement, and maintenance of roads and bridges on the trunk highway system of the state, so far as applicable. (Act Apr. 21, 1941, c. 345, §3.)

**2554-¼ i. Same—Deposit of moneys—Disbursements.**—All moneys accepted for disbursement by the commissioner of highways pursuant to the terms of this act shall be deposited in the treasury of the State of Minnesota, and, unless otherwise prescribed by the authority from which the money is received, shall be kept in separate funds, designated according to the purposes for which the moneys were made available, and shall be deemed to be held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available to be expended in accordance with Federal laws and regulations and with this act. The commissioner of highways is authorized, whether acting for the State of Minnesota or as the agent of any of its governmental subdivisions, or when requested by the United States government or any agency or department thereof, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement. (Act Apr. 21, 1941, c. 345, §4.)

**2554-¼ j. Same—Creation of liabilities.**—Nothing herein shall be construed as creating any personal liability upon the commissioner of highways or in any way authorizing him to create any liability on the part of the State of Minnesota when he is acting as the agent of any governmental subdivision thereof, or when he is acting at the request of the United States. (Act Apr. 21, 1941, c. 345, §5.)

**2554-¼ k. Repealer.**—Mason's Supplement 1940, Section 2554, Subdivision (20), is hereby repealed. (Act Apr. 21, 1941, c. 345, §6.)

**2557. Construction and maintenance of trunk highways; etc.**

**Sub. 3.**  
State Highway Department and City of Minneapolis could enter into an agreement relative to department paying for highway improvement within city upon a street designated by the commissioner as a temporary trunk highway. Op. Atty. Gen., (229a), Feb. 8, 1941.

**2559. State road and bridge fund—Apportionment.**  
—Subdivision 1. For the purpose of state aid in the construction and improvement of public highways, \$1,200,000.00 of the moneys accruing to the state road and bridge fund from the excise tax on gasoline, together with all moneys accruing from the income derived from investments in the internal improvement land fund, or that may hereafter accrue to the fund, and all other moneys accruing to the state road and bridge fund, however provided, but excluding moneys derived from the excise tax on gasoline other than said \$1,200,000.00, shall be expended on state aid roads.

Subdivision 2. On or before the first Tuesday in April of each year the commissioner of highways, the state treasurer and the state auditor shall estimate the probable sum of money that will accrue to the state road and bridge fund during the current year, for expenditure on state aid roads and after first setting aside therefrom an amount not exceeding \$50,000.00 for a reserve maintenance fund, to be expended as hereinafter provided, shall apportion the balance of the state road and bridge fund allocated for state aid roads among the different counties of the state and the commissioner of highways shall immediately send a statement of such apportionment to the state auditor and to the county auditor of each county, showing the amount apportioned to each county for expenditure during such year. The amount so apportioned to each county shall be paid by the state to the county auditor of each of said counties out of the

state road and bridge fund in the manner provided by law.

Subdivision 3. Not less than one per cent nor more than three per cent of the state road and bridge fund apportioned for expenditure on state aid roads available in any year and remaining after setting aside the funds hereinbefore provided for, shall be apportioned to any county.

Subdivision 4. The amount so apportioned to each of the counties for state aid roads shall be expended by the county board of each county in constructing, improving and maintaining state aid roads therein in conformity with the provisions of law now existing governing such expenditure on state aid roads, provided that at least forty per cent of the money so apportioned to each county shall be used for maintenance of state aid roads and bridges therein.

Subdivision 5. That any state aid heretofore apportioned to any county, but not yet paid over to the county, shall be paid to such county when and as soon as said state aid shall become due and payable under existing law notwithstanding any provision in this act. (As amended Apr. 9, 1941, c. 161, §1.)

**2560. Designation state aid roads—Revocation.**

(4).  
A village may not improve state aid roads in its boundaries and then compel county to pay therefor, since improvement and maintenance are to be conducted by county. Op. Atty. Gen. (125a-45), Aug. 13, 1940.

**2560-1. County boards may acquire land in certain cases.**

Where county takes an easement for purpose of building a county aid road, stone taken from the right-of-way must be used as a part of the construction of this particular piece of road. Op. Atty. Gen. (377a-8(a)), Nov. 22, 1939.

**2562. Maintenance of state aid roads.**

(1).  
A village may not improve state aid roads in its boundaries and then compel county to pay therefor, since improvement and maintenance are to be conducted by county. Op. Atty. Gen. (125a-45), Aug. 13, 1940.

**2563. Procedure for constructing; etc.**

A village may not improve state aid roads in its boundaries and then compel county to pay therefor, since improvement and maintenance are to be conducted by county. Op. Atty. Gen. (125a-45), Aug. 13, 1940.

**2565. Powers of county board.—**

Subd. 1 \* \* \* \* \*

Subd. 5. The county board at its July meeting may include in its annual tax levy an amount not exceeding ten mills on the dollar of the taxable valuation for the county road and bridge fund; provided that in any county containing according to the 1940 census, not less than 17,000 and not more than 18,000 inhabitants, and containing not less than 12 nor more than 14 full and fractional congressional townships, the county board at its July meeting may include in its annual tax levy an amount not exceeding 13 mills on the dollar of the taxable valuation for the county road and bridge fund. Such tax may be additional to the amount permitted by law to be levied for other county purposes. (As amended Act Feb. 27, 1941, c. 29, §1.)

Where contract for repairing a county aid road provided that power poles should be removed by owners, and cooperative electric company refused to make two moves, and county agreed to pay for one move, cost to county was a necessary incidental expense which could properly be paid out of road and bridge fund. Op. Atty. Gen. (98a-12), Nov. 4, 1939.

County board may not appropriate funds or allow a bill for good road services presented by a voluntary association supported by dues from individual members. Op. Atty. Gen. (125B-21), Nov. 14, 1940.

County commissioners may spend money in county road and bridge fund for maintaining and snow plowing town roads in unorganized townships. Op. Atty. Gen., (377a-11), Mar. 3, 1941.

(1).  
Though logical that highway engineer should select men employed under him, county board has a right to select men who are to do work if it insists on so doing, and it has authority to authorize appointment of a roadman and fix his salary on an annual basis payable monthly. Op. Atty. Gen., (122B-3), April 11, 1940.

(2).

On establishment of a county road under §2582, county must construct road as well as acquire right of way. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

County may use money in county and bridge fund to remove snow from town roads, and county may enter into contract with township for removal of snow from township roads for a period of 1 year for a lump sum to be paid by township. Op. Atty. Gen., (377a-11), Mar. 17, 1941.

Sub. 5.

Amended. Laws 1941, c. 29 set out above.

**2569. County highway engineer.—**

Subdivision 1. \* \* \* \* \*

Subdivision 2. Such county highway engineer may be selected from a list of eligible, competent highway engineers, which list shall be submitted by the commissioner of highways to the county board in May of the year in which the term of office shall expire, and shall be appointed for a term of two years, provided, that when a new county highway engineer is appointed he may be appointed for one year only, and thereafter his appointment shall be made as hereinbefore set forth. The county highway engineer shall be a citizen of the state of Minnesota, and must have resided therein for not less than three years immediately preceding the date of his appointment. The salary of the county highway engineer shall be fixed by the county board and be payable the same as other county officers are paid. His salary shall not be reduced during his term of office, provided, however, that the salary of the county highway engineer may be reduced in the same proportion as the salary of the county board in such county.

Any engineer employed by the state of Minnesota when properly certified by the commissioner of highways may be employed as county highway engineer and during the period of such employment and for the purposes of such employment he may be granted leave of absence from the state service, notwithstanding any limitation on leaves of absence contained in the civil service act.

The director of civil service shall allocate a state civil service classification to any county highway engineer as may be from time to time requested by the commissioner of highways. Such allocation shall be made on the same basis and subject to the same provisions of law as pertain to engineering and similar positions in the state classified service. The director shall also give consideration to the education, professional attainments and experience of such county highway engineer for purposes of transfer to the state service. All county highway engineers who have had not less than two years service prior to such transfer, may be transferred to such state classification so allocated, without examination, but subject to a six months probationary period, in the state classified service. The director of civil service shall establish procedure for such transfer.

The commissioner of highways may certify any county highway engineer that he may deem qualified to the director of civil service as eligible to take any specific promotional examination held for civil engineer or civil engineering aid as classified by the state civil service commission. The service rating of such engineer shall include past service with the state and as county highway engineer, if he had prior service with the state highway department as a supervisory engineer. (As amended Act Apr. 26, 1941, c. 462, §1.)

Though logical that highway engineer should select men employed under him, county board has a right to select men who are to do work if it insists on so doing, and it has authority to authorize appointment of a rodmán and fix his salary on an annual basis payable monthly. Op. Atty. Gen., (122B-3), April 11, 1940.

**2573. Taxation for road purposes by towns.**

Limitation on township levy for road and bridge fund is governed by §2573, and not §2060, and Laws 1939, c. 170, did not supersede all former provisions. Op. Atty. Gen., (5191), March 5, 1940, reversing Op. Atty. Gen., Nov. 23, 1939, and Op. Atty. Gen., Nov. 28, 1939.

Electors of a town can vote a levy up to 15 mills for road and bridge purposes, and in an emergency may levy

an additional five mills for road and bridge purposes. Op. Atty. Gen., (5190), April 5, 1940.

**2578. Improvement of ferries by municipalities.**

A village operating under Laws 1885, c. 145, may make appropriations for improvements and maintenance of roads outside of village limits under this section. Op. Atty. Gen., (476B-13), March 7, 1940.

Village may not purchase land outside of limits for purpose of constructing a roadway thereon nor enter into a contract binding it to maintain a road outside limits for any definite number of years. Id.

Town board is authorized to appropriate and expend a reasonable sum as assistance for improvements and maintenance of a bridge outside limits of town on a road leading into town, but it may not contribute money to construction of a new bridge. Op. Atty. Gen., (442a-21), March 29, 1940.

**2582. Establishment, alteration; etc.**

Establishment and alteration of county roads with federal aid. Laws 1941, c. 320.

Burden of constructing road falls on county, while expense of maintaining it falls on township through which it passes, though county may, in its discretion, appropriate money from its road and bridge fund to any town to aid in maintenance. Op. Atty. Gen. (377B-3), Nov. 2, 1940.

In establishment of a county road, land should be acquired in the manner provided by this section, and not by eminent domain under the general statute. Id.

Where county constructing a highway obtains an easement from an adjoining owner, and highway runs through a gravel pit and county took out gravel from above level of highway and used it upon this and other roads, material necessarily removed in grading and improvement could be used on other parts of same road within reasonable distance from point of removal without paying landowner for it, but if removal of material, whether above or below grade, was not necessary to proper grading or improvement, or if material, though necessarily removed, was taken and used on some other part of road at an unreasonable distance, owner would be entitled to compensation for gravel in addition to compensation for easement. Op. Atty. Gen. (377a-8), Nov. 29, 1940.

**2582-½. Road for military or national defense.—**

Whenever the county board of any county shall determine that it is necessary to establish a road or to alter an existing road for military or national defense purposes, the board may, in its discretion, establish such road or alteration and designate the route and width thereof, provided the entire cost of the right of way therefor is paid, assumed, or made available by the United States or some agency or department thereof. (Act Apr. 19, 1941, c. 320, §1.)

**2582-½ a. Same—Acquisition of rights.**—Upon establishing any such road or alteration, the county board may acquire the right of way therefor in the name of the county by purchase or gift or by condemnation in accordance with the provisions of Mason's Minnesota Statutes 1927, Chapter 41, as amended. (Act Apr. 19, 1941, c. 320, §2.)

**2582-½ b. Same—Commissioner of highways as agent of county.**—The county board of any county establishing or altering a road hereunder may designate the commissioner of highways of the State of Minnesota as agent of the county to acquire in the name of the county the right of way needed therefor by purchase or gift, or by condemnation in accordance with Mason's Minnesota Statutes 1927, Chapter 41, as amended, provided the entire cost of the right of way is paid, assumed, or made available by the United States or some agency or department thereof, and the commissioner of highways is hereby authorized to act as such agent. (Act Apr. 19, 1941, c. 320, §3.)

**2582-½ c. Same—County or state aid road.**—Any road established or altered hereunder shall be deemed to be a county road, and may be designated as a county aid or state aid road by the county board in accordance with the laws applicable to such roads. (Act Apr. 19, 1941, c. 320, §4.)

**2583. Establishment, alteration, or vacation by town boards.**

Subd. 8.

Action of board in carrying motion to table petition did not constitute a determination and board could consider new petition within year. Op. Atty. Gen., (379c-13(e)), April 17, 1940.

**2584. Dedication of land for road.**

(1).

Township funds may not be used for construction of a private road or cartway dedicated to the public. Op. Atty. Gen. (442a-21), Oct. 10, 1939.

**2585. Cartways.**

Village has no authority to construct a cartway for a resident of village who cannot gain access to local road. Op. Atty. Gen. (377-a), July 31, 1940.

(2).

"Access," means reasonable or necessary access, and whether one-rod cartway can be enlarged to two-rod is a discretionary matter. Op. Atty. Gen. (377B-1), Sept. 13, 1940.

"Damages" refer only to those due to those for land taken and do not include cost of construction of cartway. Id.

Town board may reconsider its action in granting a petition for a cartway. Op. Atty. Gen., (377a-7), Feb. 25, 1941.

**2585-3. Portage defined.**

Trails or portages on established canoe or boat routes dedicated to public use. Act Mar. 6, 1941, c. 49, allows certain counties to appropriate money for their improvement.

**2587. Roads on town line.**

Where two townships make agreement as to division of township and county line road for maintenance and repair purposes, and one township fails to keep its part in passable condition, freeholders may petition county board of county in which town responsible for repair and maintenance is located, and that county board may cause work to be done. Op. Atty. Gen. (279c-8(c)), Aug. 24, 1940.

**2590. Dedication by user.**

The "keeping in repair and working" of a road for six years must be under authority and at expense of government functioning through an appropriate agency. Op. Atty. Gen., (379a-2), May 3, 1940.

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.

**2591. Use of railroad right-of-way.**

Section prohibits public from acquiring any highway easement over tract of land owned by railroad adjoining right-of-way, even though public road was established prior to passage of Laws 1891, c. 21. Op. Atty. Gen. (831d), Dec. 19, 1939.

**2595. Contracts for bridges and roads.**

(2).

Road machinery may not be rented without advertising for bids. Op. Atty. Gen., (707d-2), April 8, 1940.

**2602. Toll bridges.**

Any city or village may construct toll bridges. Laws 1941, c. 286.

**2605. Bridges over state drainage ditches.**

This section applies only to a certain state ditch constructed in Traverse County and opinion of attorney general of July 5, 1933 is erroneous and is overruled. Op. Atty. Gen. (148-a-3), Aug. 9, 1940.

**2606. Reconstruction, repair; etc.**

Township must repair or rebuild bridges on township road, and county must repair or rebuild bridges on county road, though constructed for and still used for crossing judicial ditches. Op. Atty. Gen. (148-a-3), Aug. 9, 1940.

**2607. Impassable roads—Complaint by freeholders.**

Where two townships make agreement as to division of township and county line road for maintenance and repair purposes, and one township fails to keep its part in passable condition, freeholders may petition county board of county in which town responsible for repair and maintenance is located, and that county board may cause work to be done. Op. Atty. Gen. (279c-8(c)) Aug. 24, 1940.

**2612. Town and county boards to construct culverts.**

A town is required to install one substantial culvert for an abutting owner, where by reason of grading or regrading such culvert is rendered necessary for a suitable approach, and it is immaterial that county accepts a plat of land providing that all original construction of roads and drainage should be done by owners of respective lots in plat. Op. Atty. Gen. (377a-3), Oct. 14, 1939.

Township is obliged to install a culvert for an abutting land owner so there is no defined driveway entering into road from farm. Op. Atty. Gen. (377a-3), July 17, 1940.

**2613. Condemnation of gravel beds.**—Whenever the commission of highways, or any county or town board or common council of any village or city shall deem it necessary for the purpose of building or repairing public roads or streets within his or its jurisdiction, he or it may procure by purchase or condemnation, in the manner provided by law, any plot of ground, not exceeding 40 acres, containing gravel or stone, or clay, or sand or one or more of such road materials, suitable for road purposes, together with the right of way to the same of sufficient width to allow teams, trucks or other vehicles to pass, and on the most practicable route to the nearest public road.

Whenever any county or town board shall deem it necessary for the purpose of building or repairing public roads or streets within its jurisdiction, it may purchase any plot of ground located in an adjoining town or county, not exceeding forty acres, containing gravel or stone, or clay, or sand or one or more of such road materials, suitable for road purposes, together with the right of way to the same of sufficient width to allow teams, trucks or other vehicles to pass, and on the most practicable route to the nearest public road. (As amended Act Mar. 28, 1941, c. 77, §1.)

County may not purchase a quarter section of farm land for purpose of securing gravel from part of it and renting out the remainder, being limited to 20 acres. Op. Atty. Gen. (125a-41), Aug. 22, 1940.

Where county constructing a highway obtains an easement from an adjoining owner, and highway runs through a gravel pit and county took out gravel from above level of highway and used it upon this and other roads, material necessarily removed in grading and improvement could be used on other parts of same road within reasonable distance from point of removal without paying landowner for it, but if removal of material, whether above or below grade, was not necessary to proper grading or improvement, or if material, though necessarily removed, was taken and used on some other part of road at an unreasonable distance, owner would be entitled to compensation for gravel in addition to compensation for easement. Op. Atty. Gen. (377a-8), Nov. 29, 1940.

**2615. Obstruction of or damage to highways.**

Where there are obstructions on a 4-rod township road established pursuant to §2590, county attorney may prosecute under §§2615 or 10419, but it may be more effective to bring injunction under §10241, in which action land owner may be restrained from interfering with township, or its agents, who are to widen the road. Op. Atty. Gen. (377a-5), Aug. 14, 1940.

**2616. Moving buildings over roads.**

Mason's Minn. Stat. 1927, §2616, authorizing requirement from one about to move a building over a street or other public highway of a sum of money sufficient to cover reasonable expense of removal, held to be a declaration of state law as against which a village ordinance requiring a substantial sum in excess is ultra vires. Moore v. V., 289NW837. See Dun. Dig. 6752, 6753.

One compelled unlawfully to pay village excessive sum of money for moving building over a street may recover the same, even if village got the money in its governmental capacity. Id. See Dun. Dig. 7462.

**2617. Removal of snow—Authorized use of county equipment.**

Subdivision 1. It shall be the duty of the town board of each town, so far as funds are available for the expense thereof, to keep all town, county and judicial roads therein in a passable condition by the removal of snow therefrom; and for that purpose the road overseer is authorized to employ, by and with the consent of the town board, such men and teams and other equipment as may be necessary for the purpose. The town board may also provide for the erection of snow fences when deemed advisable.

Subdivision 2. It shall be the duty of the county board, so far as funds are available for the expenses thereof, to keep all state aid roads and state rural highways therein in a passable condition by the removal of snow therefrom. The county board may also provide for the erection of snow fences when deemed advisable.

Subdivision 3. The county board may by resolution adopted at a regular meeting thereof, authorize the use of county snow removal equipment and operators thereof, for the removal of snow upon either public or private property within the county, upon such terms

and conditions as the county board shall determine, not less however, than the actual cost of the use of such equipment and operators to the county. (As amended Act Apr. 16, 1941, c. 276, §1.)

County commissioners may spend money in county road and bridge fund for maintaining and snow plowing town roads in unorganized townships. Op. Atty. Gen., (377a-11), Mar. 3, 1941.

County may use money in county and bridge fund to remove snow from town roads, and county may enter into contract with township for removal of snow from township roads for a period of 1 year for a lump sum to be paid by township. Op. Atty. Gen., (377a-11), Mar. 17, 1941.

#### MOTOR VEHICLES

**2672. Definitions.**—Wherever in this Act the following terms are used they shall be construed to have the meaning herein ascribed to them:

"Application for Registration" shall have the same meaning as "listing for taxation," and when a motor vehicle is registered it is also listed.

Trucks used for transporting things other than passengers shall be classified and taxed as follows:

Class T trucks shall include all trucks, tractors, truck-tractors, semi-trailers and trailers used exclusively by the owner of such truck to transport agricultural, horticultural, dairy and other farm products including live stock, produced by the owner of the truck from the farm to market, and to transport property and supplies to the farm of the owner, and trucks used in rendering occasional accommodation service for others in transporting farm products from a farm to market or supplies to a farm, or a farmers' co-operative even though the same be paid for, where such truck is owned by a person not engaged in the transportation business.

Class X trucks shall include all trucks, tractors, truck-tractors, semi-trailers and trailers used exclusively in transporting property within the zone circumscribed by a line running parallel to the corporate limits of any city or village or contiguous cities and/or villages and 35 miles distant therefrom. The permitted zone of operation shall be a zone in which the postoffice address of the licensee is located unless at the time of application for license he designates some other zone. The postoffice address of the owner, or the zone selected for operation shall be stenciled by the owner in a conspicuous place on said motor vehicle. The X truck may be used by the owner thereof outside the zone for the purpose of transporting agricultural, horticultural, dairy and other farm products, including live stock produced by the owner of the truck from the farm to market and to transport property and supplies to the farm of the owner of the truck. Class X trucks may also be used by the owner thereof outside of the zone for the purpose of transporting logs and other forest products, including logs, pulpwood, tie cuts, sawed or hewed ties, bolts, firewood, rough unsurfaced lumber, square timbers, piling, mining timber, lagging, posts and poles, from the point where such products are produced to an assembly yard or railhead in the same county or contiguous county when such transportation constitutes a first haul of such products, and shall also include hauling property, equipment and supplies to the place where the production is to be performed, or materials used in highway construction, or contractors' outfits to the place where work is to be performed and/or vehicles used exclusively as service or repair cars going to or from the place rendering aid and assistance to the disabled motor vehicle. The situs of an X truck may be changed by the owner thereof on application.

Class Y trucks shall include all trucks, tractors, truck-tractors, semi-trailers and trailers not included under Class T or Class X.

"Commercial Passenger Transportation" shall mean the carriage of passengers for hire between points not wholly within the limits of the same city, village or borough, provided that bus lines operating wholly within two or more contiguous cities, villages or boroughs, or between a city and a village, or villages con-

tiguous thereto, and local bus lines carrying passengers from a railroad station from or to places in the vicinity thereof shall not be construed to be engaged in commercial passenger transportation.

"Highway." Any public thoroughfare for vehicles, including streets in cities, villages and boroughs.

"Motor Vehicles." Any self-propelled vehicle not operated exclusively upon railroad tracks, and any vehicle propelled or drawn by a self-propelled vehicle.

"Owner." Any person, firm, association or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

"Tractor." Any motor vehicle designed or used for drawing other vehicles but having no provision for carrying loads independently.

"Truck-tractor." Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Trailer." Any vehicle designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle.

"Semi-Trailer." A vehicle of the trailer type so designed and used in conjunction with a self-propelled vehicle that a considerable part of its own weight or that of its load rests upon and is carried by the towing vehicle.

"Truck." Any motor vehicle designed or used principally for carrying things other than passengers and includes a motor vehicle to which has been added a cabinet box, platform, rack or other equipment for the purpose of carrying merchandise other than the person or effects of the passenger.

"Unloaded weight" shall mean the actual weight of the vehicle fully equipped without a load.

"Gross weight" shall mean the actual unloaded weight of the vehicle, either a truck, tractor, truck-tractor, semi-trailer or trailer, fully equipped for service plus the weight of the maximum load which the applicant has elected to carry on such vehicle.

"Registrar." The registrar of motor vehicles designated in this Act.

"Sworn statement." Any statement required by or made pursuant to the provisions of this Act, made under oath administered by an officer authorized to administer oaths.

"Dealer." Any person, firm or corporation regularly engaged in the business of manufacturing, or selling, purchasing and generally dealing in new and unused motor vehicles having an established place of business for the sale, trade and display of new and unused motor vehicles and having in its, his or their possession new and unused motor vehicles for the purpose of sale or trade. (As amended Act Apr. 26, 1941, c. 465, §1.)

A farmer who uses a truck registered in the X class to haul for hire within a 35 mile zone may use his truck to haul his own produce to market outside of 35 mile zone and supplies back to his farm. Op. Atty. Gen., (632E-36), Feb. 9, 1940.

Rough lumber produced at portable saw mill does not come within phrase "logs and other like forest products".

Lumber is a manufactured product, and cannot be classed as logs or as "like forest products" though latter include fence posts, pulp wood, telephone poles, rough ties, and other rough forms into which timber might be cut by simple methods on the ground where it is felled. Op. Atty. Gen., (632E-36), June 7, 1940.

Lumber is a manufactured product which does not come within phrase "other like forest products" and cannot be hauled beyond 35-mile limit in an X truck, though sawed on land by owner and transported for the first time. Op. Atty. Gen. (632E-36), June 7, 1940.

A person with an X truck exceeding his 35-mile zone for a purpose other than that permitted by statute, is guilty of a misdemeanor or a gross misdemeanor, depending upon the facts. Op. Atty. Gen. (632E-36), June 27, 1940.

A farmer wishing to salvage flax straw on farms of others under a form of lease whereby he recovers the straw as compensation for combining grain for farmer may not haul his straw to market on a T license or an X license on his truck, since he does not produce the product hauled. Op. Atty. Gen. (632E-36), Aug. 8, 1940.

Stenciling a greater weight than licensed weight is an election of gross weight, and owner and purchaser from owner are liable for an additional charge, even though actual loading has always been within licensed weight. Op. Atty. Gen. (632e-34), Oct. 4, 1940.

**2673. Vehicles exempt from motor vehicle license.**

—Vehicles owned and used solely in the transaction of official business by representatives of foreign powers, by the federal government, the State or any political sub-division thereof, or vehicles owned and used exclusively by educational institutions and used solely in the transportation of pupils to and from such institutions, shall be exempt from the provisions of this Act requiring payment of tax or registration fees, but all such vehicles except those owned by the Federal Government, municipal fire apparatus, police patrols and ambulances, the general appearance of which is unmistakable, shall be registered as herein required and shall display tax exempt number plates furnished by the registrar at cost, provided, however, in the case of vehicles used in general police work the pleasure vehicles classification license number plates shall be displayed and furnished by the registrar at cost; but the exemption herein provided shall not apply to any vehicles, except such vehicles used in general police work, unless the name of the State Department or the political sub-division owning such vehicle shall be plainly printed on both sides thereof—in letters not less than 2½ inches high, one inch wide and of a ⅜ inch stroke and shall be in a color giving a marked contrast with that of the part of the vehicle on which it is placed and shall be done with a good quality of paint that will endure throughout the term of the registration. The printing must be on a part of the vehicle itself and not on a removable plate or placard of any kind and shall be kept clean and visible at all times. Provided, however, that the owner of any such vehicle, desiring to come under the foregoing exemption provisions shall first notify the Chief of the State Trunk Highway Patrol who shall provide suitable seals and cause the same to be affixed to any such vehicle. Tractors used solely for agricultural purposes, farm tractors used by retail dealers in farm implements in the transportation of implements of husbandry to or from a farm, whether such implements of husbandry are being drawn on their own wheels or on a trailer, or semi-trailer, tractors drawing threshing machinery or for road work other than hauling material, implements of husbandry temporarily moved upon the highway, road rollers and trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3,000 pounds used only with pleasure vehicles and not employed in the transportation of passengers or property for hire shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the provisions of this Act, except that all trailers thus exempt shall be registered as herein required and shall display identification plates furnished by the registrar at cost. Motor vehicles which are used only for the purpose of carrying sawing machines, well drilling machines, feed grinders and corn shellers temporarily attached to them, shall be subject to the registration tax as herein provided, but the machine so attached shall not be subject to this tax but shall be listed for taxation as personal property as provided by law. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines or corn shellers permanently attached to them shall not be subject to the registration tax as herein provided, but shall be listed for taxation as personal property as provided by law. Motor vehicles which during any calendar year have not been operated on a public highway shall be exempt from the provisions of this Act requiring registration payment of tax and penalties for non-payment thereof, provided that the owner of any such vehicle shall first file his verified written application with the Registrar of Motor Vehicles, correctly describing such vehicle. Nothing herein shall be construed as repealing or modifying Laws 1929, Chapter

361, or Laws 1931, Chapters 217 and 220. (As amended Act Apr. 16, 1941, c. 237, §1; Act Apr. 22, 1941, c. 360, §1.)

Sec. 2, Act Apr. 22, 1941, c. 360, provides that the act shall take effect 30 days from the date of its passage and approval.

Motor vehicle shall be exempt from registration tax during owner's service in military or naval forces. Laws 1941, c. 7.

To be exempt from tax, motor vehicle carrying enumerated machines may not be used for any other purposes. Op. Atty. Gen. (632E-12), Oct. 18, 1939.

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under §2687. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

A portable welder mounted upon either two or four wheels, making welder mechanism an integral part of the whole, is a trailer subject to registration and tax. Op. Atty. Gen., (632E-33), Jan. 10, 1940.

Two-wheeled trailers with a gross weight of load and vehicle not exceeding 3,000 pounds, used only with a pleasure vehicle and not employed in transportation of passengers or property, must be registered and display identification plates, though they are used only for carrying duck boats and camping equipment. Op. Atty. Gen. (632E-33), Jan. 30, 1940.

Surplus commodities committee is not entitled to tax exempt license for trucks, though it owns truck really in trust for a number of municipalities. Op. Atty. Gen. (632e-12), Feb. 19, 1940.

Where feed grinder is temporarily attached to motor vehicle, motor vehicle is subject to registration tax and feed grinder to personal property tax, but if feed grinder is permanently attached, motor vehicle is only subject to registration tax and neither motor vehicle nor feed grinder is subject to personal property tax. Op. Atty. Gen., (421c-37), March 20, 1940.

**2673-5. Exemptions from tax—Persons in military or naval forces.**—The motor vehicle of any person who engages in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the United States shall be exempt from the motor vehicle registration tax during the period of such active service and for 40 days immediately thereafter if the owner has filed with the registrar of motor vehicles a written application for exemption with such proof of military service as the registrar may have required and if the motor vehicle is not operated on a public highway within the state. (Act Feb. 13, 1941, c. 7, §1.)

**2673-6. Same—Refund of tax.**—If such person shall have paid the tax for the year in which he enters upon such active service he shall surrender to the registrar when he applies for the exemption the number plates issued upon the registration. Upon proper application and surrender of the number plates, the registrar shall refund to the applicant from the motor vehicle license suspense fund the portion of the tax paid proportionate to the portion of the year during which the motor vehicle will not be used on any highway of the state. (Act Feb. 13, 1941, c. 7, §2.)

**2673-7. Same—Necessity of payment of tax.**—If such person shall not have paid the tax for the year in which he enters upon such active service, the registrar shall not accept his application until he has registered his motor vehicle and paid the portion of the tax with penalties, if any, proportionate to the portion of the year up to the date of application. (Act Feb. 13, 1941, c. 7, §3.)

**2674. Rate of tax.**—(a), Motor vehicles, except as set forth in Mason's Supplement 1940, Section 2673, using the public streets or highways in the state of Minnesota shall be taxed in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village, as provided by law, and shall be privileged to use the public streets and highways, on the basis and at the rates for each calendar year as follows:

1. Motor vehicles for carrying passengers and hearses . . . 2.2 per cent of value.

Provided that the minimum tax on all passenger motor vehicles under 2,000 pounds weight except as hereinafter provided shall be . . . \$5.00 and the min-

imum tax on all passenger motor vehicles 2,000 pounds and over in weight shall be . . . \$7.50.

2. The tax on Class "T" trucks with carrying capacity of less than 2,000 pounds, shall be 1.2 per cent on the base value.

The tax on Class "T" trucks with carrying capacity of 2,000 pounds and less than 3,000 pounds, shall be 1.44 per cent on the base value.

The tax on Class "T" trucks with carrying capacity of 3,000 pounds and over, shall be 2.4 per cent on the base value.

Provided, however, that the tax on Class "T" trucks with carrying capacity of less than 3,000 pounds shall be 1.92 per cent on the base value during the first and second years of vehicle life.

Provided that the minimum tax on all Class "T" and "X" trucks and tractors of one ton and under manufacturers' rated carrying or hauling capacity shall be \$7.50 except that the minimum tax, on trucks converted from passenger vehicles, including those converted by the factory or a dealer by adding a pickup box to a passenger vehicle before it was used as a passenger vehicle, shall be the same as the minimum on the passenger vehicle from which they were converted and the minimum tax on all trucks and tractors of over one ton and under two tons manufacturers' rated carrying or hauling capacity used only as permitted under Class "T" shall be \$10.00 and the minimum tax on trucks and tractors of over one ton and under two tons manufacturers' rated carrying or hauling capacity used only as permitted under Class "X" shall be \$15.00 and minimum tax on all trucks and tractors of two tons or over and under three tons manufacturers' rated carrying or hauling capacity shall be \$30.00 and the minimum tax on all trucks and tractors of three tons or over and under four tons manufacturers' rated carrying or hauling capacity shall be \$60.00 and the minimum tax on all trucks and tractors of four tons or over and under five tons manufacturers' rated carrying or hauling capacity shall be \$85.00 and the minimum tax on all trucks and tractors of five tons and over and under six tons manufacturers' rated carrying or hauling capacity shall be \$125.00 and the minimum tax on all trucks and tractors of six tons and over manufacturers' rated carrying or hauling capacity shall be \$150.00 and the minimum tax on trailers and semi-trailers shall be \$2.00 for each ton or fraction thereof of such capacity.

3. The tax on Class "X" trucks as defined shall be 3.4 per cent on the base value.

4. The tax on Class "Y" trucks used in intrastate commerce shall be as provided in Section (a)-1 hereof.

The tax on Class "Y" trucks used exclusively in interstate commerce shall be as provided in Section (a)-3 hereof.

5. Buses and carriers of passengers for hire engaged in commercial passenger transportation, other than taxicabs and vehicles engaged in livery business shall pay an annual gross weight use tax which on a new vehicle for the first and second years shall be four times the tax paid by a Y truck of the same gross weight and said tax shall be determined in the manner provided for Class Y trucks as set forth in Sections (a)-1 and (a)-2 hereof, for the third and fourth years of the life of such vehicle the tax shall be three times the tax paid by Y truck of the same gross weight as the bus for the fifth year of the life of such vehicle the tax shall be two times the tax paid by Y trucks of the same gross weight as the bus, for the sixth year of the life of such vehicle the tax shall be one and one-half times the tax paid by Y trucks of the same gross weight as the bus; for every year of the life of the vehicle after the sixth year the minimum tax on all commercial passenger busses of over 25 passenger seating capacity shall be \$350.00 and/or those of 25 passenger and less and over five passenger seating capacity, other than taxicabs and vehicles engaged in livery business, shall be \$250.00. This section shall

not apply to vehicles for the year 1939 on which the tax has been paid.

6. Motorcycles without side car . . . \$3.00. Motorcycles, side car additional . . . \$2.00.

7. Motor vehicles specially equipped for operation over snow and used exclusively for such purpose . . . \$3.00 of weighing one ton or less, and an additional \$2.00 for each additional ton or fraction thereof.

8. Value until the end of the first calendar year of vehicle life construing the year of the model designation as the first year of such life shall be construed to mean the "base price for taxation" as hereinafter defined.

For the purpose of fixing a base price for taxation from which depreciation in value at a fixed per cent per annum can be counted, such price is defined as follows:

The base price for taxation of a motor vehicle of which a similar or corresponding model, as defined in Mason's Supplement 1940, Section 2692, was being manufactured on August 1 preceding the year for which the tax is levied, shall be the manufacturers' list price of such similar or corresponding model in effect on such August 1. The base price for taxation of a motor vehicle of which no such similar or corresponding model was manufactured until after such August 1 shall be the manufacturers' list price at the factory when the vehicle taxed was first manufactured. The base price for taxation of a motor vehicle of which no such similar or corresponding model has been manufactured since a time prior to such August 1 shall be the price fixed by the registrar as a reasonable manufacturers' list price at the factory, on such August 1 if such vehicle has been then manufactured at prevailing costs.

After the first year of vehicle life the base value for taxation purposes shall be reduced as follows: ten per cent the second year, and 15 per cent the third and each succeeding year thereafter, but in no event shall such tax be reduced below the minimum.

When a motor vehicle first becomes subject to taxation during the calendar year for which the tax is paid, the tax on it shall be for the remainder of that year prorated on a monthly basis, one-twelfth of the annual tax for each calendar month, counting the month during which it becomes subject to the tax as the first month of such remainder. (As amended Act Apr. 28, 1941, c. 515, §1.)

\* \* \* \* \*

(a)-2. The applicant for a Y license shall state in writing upon oath among other things, the unloaded weight for such vehicle and the maximum load which the applicant proposes to carry thereon and such vehicle shall be licensed to carry as the maximum legal load the loadweight so selected, and no vehicle shall exceed such licensed loadweight by more than 1,000 pounds. The gross weight of the vehicle for which such license tax is paid shall be stenciled in a conspicuous place on said vehicle by the owner thereof and the weight of a tractor or truck-tractor shall be likewise stenciled in a conspicuous place thereon.

The Registrar of Motor Vehicles shall cancel the certificate of registration and/or license plate issued by him upon conviction of the owner and/or driver of such vehicle for transporting a gross weight exceeding the authorized gross weight by more than 1,000 pounds—unless such owner within thirty days after such conviction shall apply to increase the authorized gross weight on such vehicle to a level equal to or greater than the gross weight being transported at the time of his conviction and shall pay the necessary additional tax for such increase.

The tax imposed on Class Y trucks in each instance shall be increased 50% on a motor vehicle not equipped wholly with pneumatic tires. (As amended Act Feb. 19, 1949, c. 12, §1.)

\* \* \* \* \*

Upon failure of owner of truck registered under the truck-mile class to comply with requirements as to reports within ten days, it is mandatory that his deposit

of \$50 be forfeited, and if the deposit is sufficient to cover the tax, trucker may apply for new registration, without right to reinstatement of original registration. Op. Atty. Gen. (633h-5), Oct. 31, 1939.

Laws 1939, c. 388, amending this section, did not repeal Laws 1939, c. 253, amending this section, and both should be given effect. Op. Atty. Gen. (632E-35), Dec. 15, 1939.

Where licensed dealer sold trailer which was registered by buyer in truck-mile class, and assigned conditional sales contract to an individual who was not a licensed dealer and who repossessed trailer and desired to sell it to a purchaser who wished to operate in the X class, secretary of state may convert registration for new purchaser. Op. Atty. Gen. (632e-36), Sept. 19, 1940.

(a)-2. Allowance of 1000 pounds was made to compensate for accumulations of moisture, mud, snow and ice, and a conviction for operating vehicle with a greater weight than license under gross weight use tax is conviction for transporting excessive load weight. Op. Atty. Gen. (632e-36), Aug. 22, 1940.

Provision with regard to registration for gross load weight which vehicle was carrying at time of offense of transporting a greater gross weight than registration allowed, does not carry over into following year, but on application in the following year a full year's registration tax must be paid and there must be added thereto the arrears automatically becoming due on conviction for overloading. Op. Atty. Gen. (632E-28), Nov. 8, 1940.

(a)-3. Non-resident truck operator cannot operate under both X registration and reciprocity provisions in different zones. Op. Atty. Gen. (632e-36), Oct. 4, 1940.

(a)-4. Transport company contracting with dealers to drive new vehicles from factory to dealer's place of business, whether within or without the state, cannot be registered in truck-mile class without cash or bond deposit. Op. Atty. Gen. (632e-34), Feb. 19, 1940.

Failure to complete registration would not relieve truck owner from liability to make required reports and payments, nor prevent forfeiture of entire deposit on failure to do so. Op. Atty. Gen., (632d-2), April 30, 1940.

#### 2674-4. Taxation of certain motor vehicles.

Exactng a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v. Holm, 295NW297. See Dun, Dig. 9140.

#### 2675. Motor vehicles to be registered.

License required for transporting of motor vehicles. Laws 1941, c. 213.

Prosecution of the passenger in car being operated by another without plates. Op. Atty. Gen. (494B-5), June 20, 1940.

**2676. Owner shall file listing for taxation.—Offenses.—**(a). Every owner of any motor vehicle in this state, not exempted by Section 2 or Section 14 hereof, shall as soon as he shall become the owner thereof and thereafter during the period October 1 to December 31 each year, both dates inclusive, file with the registrar on a blank provided by him, a listing for taxation and application for the registration of such vehicle, stating the name and address of the owner, and the nature of his ownership, the name and address of the person from whom purchased, name of manufacturer, name of motor vehicle, year manufactured, year and number of the model, engine and car number, type of body, the list price thereof at the factory, the weight of the vehicle in pounds, and its rated load carrying capacity or seating capacity, the number of cylinders, and such other information as the registrar may require. The said owner shall make an oath or affirmation before some officer authorized by law to administer oaths or affirmations that the statements made are correct and true; and any false statement wilfully and knowingly made in regard thereto shall be deemed perjury and punished accordingly; however, such listing for taxation and application for registration need not be sworn to when the applicant is listing the same vehicle for taxation and registration for the second or any succeeding time. The listing and application for registration by dealers or manufacturers' agents within the state, of motor vehicles received for sale or use within the state shall be accepted as compliance with the requirements of this act, imposed upon the manufacturer. (As amended Act Apr. 28, 1941, c. 515, §2.)

#### 2677. Registrar shall issue registration certificate.

Where a trucker is convicted of transporting a greater gross weight than registration allows, there immediately becomes due taxes in accordance with the load, and such additional tax becomes an arrearage which must be paid for registration in a subsequent year, if not paid in year of offense by re-registration. Op. Atty. Gen. (633E-28), Nov. 8, 1940.

**2680. Certificate to expire on December 31.—**The registered owner's right to the registration certificate provided for herein and the right to use the number plates issued therewith shall expire upon the termination of ownership of any person in the motor vehicle for which the same was issued, and in any event at midnight on December 31 of the year for which issued. (As amended Act Apr. 28, 1941, c. 515, §3.)

#### 2681. Transfer of ownership, destruction, etc.

Rights of a good faith purchaser from registered automobile owner are subject to those of assignee of a prior and duly recorded conditional sale contract. Slawik v. C., 296NW496. See Dun, Dig. 4167a.

Bill of sale from a motor company would not authorize transfer of registration where right of motor company to sell car was based upon an agreement of owner to convey to a purchaser. Op. Atty. Gen., (632a-21), May 10, 1940.

Where truck was registered for 1940 in name of owner and a short time thereafter was sold at execution sale but plates were not on truck and owner refused to surrender them and duplicate plates could not be issued in opinion of Attorney General and purchaser applied for registration and paid tax, former owner was not entitled to a refund of tax by surrender of original plates. Op. Atty. Gen., (632E-24), Jan. 16, 1941.

#### 2682. Refunds.

Where truck was registered for 1940 in name of owner and a short time thereafter was sold at execution sale but plates were not on truck and owner refused to surrender them and duplicate plates could not be issued in opinion of Attorney General and purchaser applied for registration and paid tax, former owner was not entitled to a refund of tax by surrender of original plates. Op. Atty. Gen., (632E-24), Jan. 16, 1941.

#### 2684. Passenger motor vehicles from other states. [Repealed.]

Repealed. Laws 1935, c. 355, §4.  
Persons in military or naval services, licensed under laws of another state to operate a motor vehicle, may operate same in this state. Laws 1941, c. 275.

**2684-1. Reciprocal permission to non-resident auto owners.—**Any resident of any state, District of Columbia, Canadian province or other foreign power, who owns and is duly licensed under the laws of his own state or country to operate a motor vehicle upon the highways thereof, may also operate such motor vehicle personally or by his authorized driver upon the streets and highways of townships, boroughs, villages, and cities in this state, subject to the following conditions and limitations:

First. Upon condition that the exemptions provided by this act as hereinafter limited shall be operative as to a motor vehicle owned by a non-resident only to the extent that under the laws of the state or Canadian province of his residence (or that under the laws of the District of Columbia or other foreign power if that is his residence) like exemptions and privileges are granted to motor vehicles registered under the laws and owned by residents of Minnesota.

Second. Upon condition that any such motor vehicle so operated in this State by any such non-resident at all times shall carry and display all license number plates or like insignia required by the laws of the home state or country of said non-resident.

Third. Upon condition that such non-resident motor vehicle owner shall first file with the registrar of motor vehicles in this State an instrument in writing, subscribed by him and duly acknowledged before a notary public or other officer with like authority, setting forth the name and address of the owner and of each person having any interest in such motor vehicle, the name and address of the person from whom such motor vehicle was purchased or acquired, the name of the manufacturer and of the motor vehicle if it has a name, the year when manufactured, the serial number or other number and model identifying such motor vehicle, the weight in pounds of such mo-

tor vehicle and the number of cylinders of the motor engine. Said written instrument shall also contain substantially the following:

"The undersigned owner of the above described motor vehicle hereby consents and agrees that the use and operation of said motor vehicle inside the state of Minnesota shall always be subject to all the laws, ordinances, rules and regulations applicable to like operation thereof by a citizen and resident of the state of Minnesota except as it may be expressly provided otherwise by the laws of Minnesota. The undersigned owner hereby consents to be sued or otherwise proceeded against, either civilly or criminally, at any place in Minnesota where the above described motor vehicle is operated, upon any claim or cause of action arising from such operation in the same manner as a Minnesota citizen and resident owner and operator of a like motor vehicle might be sued or proceeded against in like circumstances. And in any such civil proceedings, legal process and other notices or papers may be served upon the under-signed owner of the above described motor vehicle by depositing a copy thereof in the United States mails, properly enveloped, sealed, postage prepaid, and addressed to the under-signed owner at his above stated address or at such other address as he may have later filed in writing supplementary to this agreement. Such service shall be deemed personal service, and shall have the same force and effect as like process or notice served personally upon a motor vehicle owner residing in and being a citizen of the state of Minnesota." (As amended Apr. 9, 1941, c. 149, §1; Act Apr. 28, 1941, c. 535, §1.)

A Minnesota railroad corporation licensed to do business in Wisconsin cannot operate trucks registered in Wisconsin in state of Minnesota, though only used to transport property belonging to railroad to points in Minnesota and not transporting property for any third person. Op. Atty. Gen., (632c-6), April 30, 1940.

Where a silo company incorporated under laws of Wisconsin has branch in that state and maintains their trucks licensed in that state, and also has an office and factory located in Minnesota where it maintains trucks licensed in Minnesota, used for intrastate hauling in Minnesota, such license in Wisconsin may deliver silos occasionally in Minnesota in interstate commerce without obtaining Minnesota license, if the trucks come under a reciprocity agreement between the states, providing secretary of state determines that Wisconsin trucks are not being regularly operated by owner in its business in this state. Op. Atty. Gen. (632-c-6), July 23, 1940.

Non-resident truck operator cannot operate under both X registration and reciprocity provisions in different zones. Op. Atty. Gen. (632e-36), Oct. 4, 1940.

A non-resident motor vehicle owner registering it under a certain classification without calling an application for reciprocity privileges cannot later have registration revoked and obtain a reciprocity permit or obtain a refund of registration tax. Op. Atty. Gen. (632E-32), Dec. 5, 1940.

A corporation organized under laws of Maine and licensed to do business in Missouri and Minnesota may not obtain a reciprocity permit for motor vehicles registered under laws of Missouri. Op. Atty. Gen. (632C), Dec. 10, 1940.

**2684-6. Application of act.**—This act shall not apply to a passenger motor vehicle owned by a resident of any state, District of Columbia or any Canadian province temporarily residing in this state while regularly employed therein under contract for a term of six months or more, nor to a passenger motor vehicle used to haul for hire except such a vehicle that may be owned and registered in another state, the District of Columbia, or any Canadian province, and chartered for an occasional trip into or through Minnesota without taking on any additional passengers in this state.

The reciprocity provision of the act shall not apply to trucks, tractors, truck-tractors, semi-trailers and combinations of such vehicles engaged in transporting property for hire. The reciprocal provisions of this act shall apply to the owner of a truck exclusively used in transporting agricultural, horticultural, dairy and other farm products, including livestock, which the owner of the truck has produced or raised and such truck is used to transport such products from the farm to market and to transport property and sup-

plies to the farm of the owner and trucks used in rendering occasional accommodation service for others in transporting farm products, including livestock, from a farm to market or supplies to the farm even though the same may be paid for where such vehicle is owned by a person not engaged in the transportation business. "Occasional" shall be construed to mean a special, individual round trip not to exceed, however, two such trips a month for any one such vehicle. The reciprocal provisions of this act shall apply to a truck for hire engaged in the transportation of livestock and farm products, provided, that such reciprocal provision shall apply to only one truck owned or operated by any person or corporation, and provided, further, that such truck does not use the highways of this state more than twice in any week and does not travel on the highways of Minnesota from the state line for a greater distance than 50 miles. For the proper enforcement of this section the Registrar of Motor Vehicles may require such truck transporting livestock for hire to carry a plate to be furnished by said Registrar for a fee of \$2.00, and the owner or operator to file such reports as may be necessary to compel a compliance with this section.

Every non-resident, including any foreign corporation carrying on business except as herein provided within this state and owning and regularly operating in such business any motor vehicle within this state shall be required to register each such vehicle and pay the same tax and penalties, if any, therefor as is required with reference to like vehicles owned by residents of Minnesota.

The reciprocity privileges provided by this act shall apply also to a motor vehicle exclusively engaged in transporting commerce from a state or from any province in the Dominion of Canada exclusively upon the streets of any city or village in the State of Minnesota. (As amended Act Apr. 22, 1941, c. 382, §1.)

Op. Atty. Gen. (632-c-6), July 23, 1940; note under §2684-1.

Contract existing between United States and persons serving in Army, Navy, Marine Corps, and National Guard, whether voluntarily or under Selective Service Act, is not a "contract of employment" within section, and such persons are entitled to full reciprocity privileges to same extent and under same conditions that any other resident of any state is entitled to. Op. Atty. Gen., (632E), Jan. 13, 1941.

**2684-9. Non-resident dealers in motor vehicles must register vehicles and pay tax.**

This act does not involve denial of due process of law, impairment of contract rights, or burdening of interstate commerce, so as to confer jurisdiction on the federal district court of suit to restrain enforcement without regard to the amount in controversy: *Reese v. H.*, (DC-Minn), 31FSupp435.

Amount in controversy for jurisdictional purposes was cost of bond for each car multiplied by number of cars brought into state for resale. Allegations as to losses or profits since enactment of the law were not pertinent. Id.

Section 4(b) of the Uniform Motor Vehicle Anti-Theft Act, which provides for \$25 inspection fee for cars bought in another state and brought into Illinois, is unconstitutional, it being in effect not a regulatory measure but a burden upon and discrimination against interstate commerce. *Clements v. H.*, 30NE(2d)(Ill)643.

A foreign truck taken in trade for a tractor and plow attachments was not subject to this act if of less value than tractor to be used upon highway, but is subject to act if tractor is to be used exclusively in farm work or is of less value than truck. Op. Atty. Gen. (632A-7), Feb. 19, 1940.

Act does not apply to a foreign used car brought into state as a trade-in on a new motor vehicle or as a trade-in on another used or second-hand car of greater value than vehicle so brought for purpose of sale or resale. Id.

A used car from a foreign state brought in and delivered to a Minnesota dealer with an order for a new car on future delivery, not yet manufactured, is exempt. Op. Atty. Gen. (632e-18), Sept. 12, 1940.

**2685. Manufacturers not using highways need not register.**

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under §2687. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

**2686. Manufacturer's and dealers in motor vehicles must be licensed.** (a) No person, co-partnership or corporation shall engage in the business, either exclusively or in addition to any other occupation, of selling motor vehicles, new or used, or shall offer to sell, solicit or advertise the sale of motor vehicles, new or used, without first having acquired a license therefor as hereinafter provided. Application for such license and renewal thereof, shall be made to the registrar of motor vehicles, shall be in writing, and duly verified by oath. The applicant shall submit such information as said registrar may require, upon blanks provided by the registrar for such purpose. No application shall be granted nor a license issued to anyone, until and unless the applicant shall furnish proof satisfactory to the registrar of the following:

1. That the applicant has an established place of business. An established place of business when used in this act shall mean a permanent enclosed building or structure either owned in fee or leased at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and not for the purpose of evading this act, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place. Said place of business shall not mean residence, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

2. That if the applicant desires to sell, solicit or advertise the sale of new and unused motor vehicles, he must have a bona fide contract or franchise in effect with a manufacturer or distributor of the motor vehicle, or motor vehicles, he proposes to deal in. He shall also have adequate space in the building or structure wherein his business is conducted for the display of motor vehicle or vehicles and shall also provide for the repair and servicing of motor vehicles and the storage of parts and accessories in the city or village where his business is located and conducted, such service may be provided through contract with bona fide operators actually engaged in such services.

(b) If a license is granted, the licensee may be permitted to use unimproved lots and premises for sale, storage and display of motor vehicles; provided, however, that such unimproved lots and premises must be located within the county of the established place of business of the applicant.

If the applicant desires to set up an established place of business, as hereinbefore defined, in more than one county in this state, said applicant shall secure separate license for each county. No license for such additional county shall be issued until the registrar shall have been furnished with proof that the applicant has an established place of business as hereinbefore defined, in such additional county, and has otherwise complied with the requirements of this act for securing of license in the initial county.

If the licensee desires to remove from the established place of business occupied when the license is granted, to a new location, he shall first secure from the registrar of motor vehicles permission to do so. He shall be required to furnish proof satisfactory to the registrar that the premises to which he proposes to remove conform to the requirements of Section 1, Subdivision (a) hereof.

(c) The registrar shall grant or deny the application for such license within 60 days after the filing of the application. If said application is granted, said registrar shall license the applicant as a motor vehicle dealer for the remainder of the calendar year, and issue a certificate of license therefor as the registrar may provide upon which shall be placed a distinguishing number of identification of such dealer. Each application for such license, and application for the renewal thereof, shall be accompanied by the sum of \$20.00, which shall be paid into the state treasury and credited to the general revenue fund. Such license, unless sooner revoked as hereinafter provided, shall,

upon the furnishing of proof as in the initial application herein provided for, satisfactory to the registrar, be renewed by the registrar annually upon application by the dealer and upon the making of all listings, registrations, notices and reports required by the registrar, and upon payment of all taxes, fees, and arrears due from such dealer.

(d) Such license may be revoked by the registrar of motor vehicles upon proof satisfactory to him of either of the following:

(1) Violations of any of the provisions of Mason's Supplement 1940, Sections 2672 to 2674-7, inclusive, or Sections 2676, or 2682; 2684-1, to 2684-6, inclusive, 2689, 2690, and 2692 or Mason's Minnesota Statutes of 1927, Sections 2675, 2677 to 2681, inclusive, or 2683, 2687, 2688, 2694; or any of the provisions of this act.

(2) Violation of or refusal to comply with the requests and order of the motor vehicle registrar.

(3) Failure to make or provide to the registrar all listings, notices and reports required by him.

(4) Failure to pay to the registrar all taxes, fees, and arrears due from and by such dealer.

(5) Failure to duly apply for renewal of license provided for herein.

(6) Revocation of previous license, of which the records of the registrar relating thereto shall be prima facie evidence of such previous revocation.

(7) Failure of continued occupancy of an established place of business as defined herein.

(8) Sale of a new and unused current model motor vehicle other than the make of motor vehicle described in the franchise or contract filed with the original application or renewal thereof, without permission from the registrar.

(9) Sale of a new and unused current model motor vehicle to any one except for consumer use, or to a dealer duly licensed to sell the same make of motor vehicle.

(10) Material misstatement or misrepresentation in application for license or renewal thereof.

(e) The registrar shall issue to every motor vehicle dealer, upon a request from such motor vehicle dealer licensed as provided in subsection (a) hereof, one pair of number plates displaying a general distinguishing number upon the payment of five dollars to the registrar of motor vehicles. The registrar shall also issue to such motor vehicle dealer such additional pair of such number plates as said motor vehicle dealer may request, upon the payment of such motor vehicle dealer to the registrar of the sum of five dollars for each additional pair. Motor vehicles, new and used, bearing such number plates owned by such motor vehicle dealer, may be driven upon the streets and highways of this state by such motor vehicle dealer, or any employee of such motor vehicle dealer, for demonstration purposes, or for any purpose incident to the usual and customary conduct and operation of his business, in which he has been licensed under Mason's Supplement 1940, Section 2686, to engage. Motor vehicles, new or used, owned by such motor vehicle dealer and bearing such number plates, may be driven upon the streets and highways for demonstration purposes by any prospective buyer thereof for a period of 48 hours. Any motor truck, new or used, owned by such motor vehicle dealer and bearing said motor vehicle dealer's number plates may be driven upon the streets and highways of this state, for demonstration purposes by any prospective buyer for a period of seven days. Upon the delivery of such motor vehicle or motor truck, new or used, to said prospective buyer for said demonstration purposes, said motor vehicle dealer shall deliver to said prospective buyer a card or certificate giving the name and address of said motor vehicle dealer, the name and address of such prospective buyer, and the date and hour of such delivery. Such card or certificate shall be in such form as the registrar may provide to the motor vehicle dealer for such purpose, and shall be carried by such prospective

buyer while driving said motor vehicle or motor truck.

(f) Every licensed dealer in motor vehicles, as above defined, may make application upon a blank provided by the registrar for that purpose for a general distinguishing number for use upon all new motor vehicles being transported from the dealer's source of supply or other place of storage, to his place of business, or to another place of storage, or from one dealer to another. A general distinguishing number shall be assigned by the registrar to such dealer for such purpose, and the registrar shall then issue to said dealer such number of pairs of such plates as the dealer may request, upon the payment by said dealer to said registrar of the sum of two dollars per pair. Such plates shall be known as "in transit" plates. The registrar may issue such "in transit" plates, upon the payment of the sum of two dollars to said registrar, to dealers duly licensed in other states or provinces upon information furnished him in such manner as he may prescribe, and which satisfies him that persons or companies applying therefor are duly licensed dealers under the laws of such states or provinces.

(g) The registrar of motor vehicles, upon his own motion or upon the complaint of another, shall prepare and cause to be served upon the licensee complained of, a written notice or complaint setting forth, in substance, the violations charged, and shall require said licensee to appear at the time and place fixed therein before said registrar or authorized deputy, and show cause why his license should not be revoked.

The registrar shall, at the time and place fixed in said notice, proceed to hear and determine the matter on its merits. If the said registrar shall find the existence of any of the causes for revocation as set forth in Section (d) above, and shall determine that the licensee's license should be revoked, he shall make a written order to that effect, and a copy of such order shall be served upon such licensee in the manner provided by law for the service of summons in a civil action. Upon such revocation, if it be a motor vehicle dealer, he shall immediately return to the registrar all number plates, including any "in transit" plates, in his possession.

(h) Any party or person aggrieved by such order of revocation may appeal therefrom to any district court of the state within fifteen days after the service of a copy of such order upon the dealer complained of by the service of a written notice of appeal upon said registrar. The person serving such notice of appeal shall, within five days after the service thereof, file the same, with proof of service thereof, with the clerk of the court to which such appeal is taken, and thereupon said district court shall have jurisdiction over said appeal and the same shall be entered upon the records of said district court and shall be tried therein according to the rules relating to the trial of civil actions insofar as the same are applicable. The complainant before the registrar, if there was one, otherwise the registrar of motor vehicles, shall be designated as the "Complainant," and the dealer complained of shall be designated as the "Defendant." No further pleadings than those filed before the registrar shall be necessary. The findings of fact of the registrar shall be prima facie evidence of the matter therein stated; and the order shall be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law. If it shall be determined that the order is unlawful and unreasonable it shall be vacated and set aside. Such appeal shall not stay or supersede the order appealed from unless the court, upon an examination of said order and the return made on said appeal, and after giving defendant notice and opportunity to be heard, shall so direct. When no appeal is taken from such order, the parties affected thereby shall be deemed to have waived the rights to have the merits of such controversy reviewed

by a court, and there shall thereafter be no trial of the merits or re-examination of the facts by any district court to which application may be made from a writ to enforce the same.

(i) Any party to an appeal or other proceeding in the district court under the provisions of this act may appeal from the final judgment, or from any final order therein; to the supreme court in the same cases and manner as in civil action.

(j) The registrar is hereby authorized to enforce this act and he may also appoint under his hand a sufficient number of persons amongst his several employees, said additional employees however not to exceed three in number, to act as inspectors and investigators and who when so appointed, shall have full authority to enforce this act. Before entering upon their official duties, the oath of appointment of each of said additional employees shall be filed in the office of the secretary of state. The registrar, his inspectors or investigators, when traveling or otherwise pursuing their duties outside the office of the registrar, shall be paid for their actual expenses incurred out of the same funds as other employees of the registrar of motor vehicles.

(k) The registrar shall have, and is hereby granted full authority to issue subpoenas requiring the attendance of witnesses before him, production of books, papers and other documents, articles or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and shall have full authority to administer oaths and to take testimony. All parties disobeying the orders of subpoenas of said registrar shall be guilty of contempt, as in proceedings in district courts of the state, and may be punished in like manner.

(l) Any person, co-partnership, or corporation, domestic or foreign, and any officer, or director, or employee of a corporation, domestic or foreign, who shall violate or neglect, fail or refuse to comply with any of the provisions of this act shall be guilty of a misdemeanor.

(m) The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid such decision shall not affect the validity of the other provisions of this act. (As amended Act Apr. 10, 1941, c. 176, §1.)

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under §2687. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

Sale of motor vehicles by finance company for purpose only of recouping its loans or investments does not constitute engaging in business of selling motor vehicles, unless it systematically undertakes to sell such vehicles for profit. Op. Atty. Gen. (632E-5), Oct. 28, 1939.

A person other than dealer or his employee driving without demonstration permit, may or may not be an employee of dealer within meaning of section. Op. Atty. Gen. (632e-5), Nov. 16, 1939.

Purpose of demonstration permit is to place in prospective purchaser's hands evidence of fact that he is operating vehicle with dealer's permission for demonstration purposes, and presence in vehicle of dealer or his employee would in itself imply that permission had been granted. Id.

One holding a dealer's license in this or in another state driving new vehicles from his source of supply or other place of storage to his place of business is only required to procure "in transit" plates at \$2.00 per pair, after furnishing required information to registrar. Op. Atty. Gen. (632a-8), May 29, 1940.

(c). Where application was made for a dealer's license and fee of \$20 was paid into treasury, and it later appeared that applicant was not qualified as a dealer, and no license was issued, there is no authority under law for refund of fee. Op. Atty. Gen. (632a-8), Dec. 2, 1939.

(e). Dealer's plates may only be used in pairs, and a dealer moving two semi-trailers cannot put one plate of a pair on rear of each semi-trailer. Op. Atty. Gen. (632a-16), Nov. 8, 1940.

(f). Minnesota highways may be used by duly licensed dealer in Minnesota or other states or provinces to transport new motor vehicles. Op. Atty. Gen. (632-a-8), Aug. 1, 1940.

**2686-4. Transportation of motor vehicles—License fee and plates—Additional plates—Penalties.**—Any person, firm or corporation engaged in the business of transporting motor vehicles, not his own, by delivering, by drive-way or towing methods, either singly or by means of the full method, the saddle mount method, the towbar method, or any other combination thereof, and under their own power, new vehicles over the highways of the state of Minnesota from the manufacturer or any other point or origin, to any point of destination, within or without the state of Minnesota, shall make application to the registrar of motor vehicles for a drive-a-way in transit license. This application for annual license shall be accompanied by a registration fee of \$250.00 and shall contain such information as the registrar of motor vehicles may require. Upon the filing of the application and the payment of the fee, the registrar of motor vehicles shall issue to each drive-a-way operator a general distinguishing number, which number must be carried and displayed by each motor vehicle in like manner as is now provided by law for vehicles while being operated upon public highways and such number shall remain on the vehicle from the manufacturer, or any point of origin, to any point of destination within or beyond the state of Minnesota. Additional plates bearing the same distinguishing number desired by any drive-a-way operator may be secured from the registrar of motor vehicles upon the payment of a fee of two dollars for each set of additional license plates. Any person, firm or corporation engaging in the business as a drive-a-way operator of transporting and delivering by means of full mount method, the saddle mount method, the towbar method, or any combination thereof, and under their own power, new motor vehicles, who fails or refuses to file or cause to be filed an application, as is required by law, and to pay the fees therefor as the law requires, shall be found guilty of violating the provisions of this act and upon conviction be fined not less than \$50.00, and not more than \$100.00 and all costs of court. Each day so operating without securing the license and plates as required herein shall constitute a separate offense within the meaning of this act. (Act Apr. 14, 1941, c. 213, §1.)

**2686-5. Same—Liability insurance.**—Any person as hereinbefore defined pulling or towing any vehicle designed, equipped or intended to operate under its own power, said pulling or towing being accomplished by another vehicle when operating upon any public highway of the state of Minnesota, shall before such pulling or towing, file with the registrar of motor vehicles a liability insurance policy or bond covering public liability and property damage, issued by some insurance or bonding company, or insurance carrier authorized to do business in the state of Minnesota, which policy or bond shall be approved by the registrar of motor vehicles and shall be for not less than \$10,000 for public liability and not less than \$5,000 for property damage. (Act Apr. 14, 1941, c. 213, §2.)

**2686-6. Same—Safety, regulations.**—In pulling or towing such motor vehicles, at least two safety chains shall be used in addition to tow bars and all sets shall be not less than 500 feet apart and no person shall operate such vehicle in excess of 35 miles per hour. (Act Apr. 14, 1941, c. 213, §3.)

**2686-7. Same—Offenses—Application.**—Any person violating the provisions of this section shall be guilty of a misdemeanor. The provisions of this act shall not apply where such vehicle is being towed as a temporary movement for the purpose of making repairs, or for the purpose of pulling or towing such vehicle from one point to another point for the purpose of making repairs, or on repossessed cars being towed by an agent or employee of any person or bona fide finance company in the state of Minnesota where such towing is incidental to the repossession of such vehicles. (Act Apr. 14, 1941, c. 213, §4.)

**2686-8. Same—Fees—Disposition.**—All fees derived from this act shall be paid into the state treasury and credited to the trunk highway sinking fund. (Act Apr. 14, 1941, c. 213, §5.)

**2687. All machines must be registered—Exceptions.**—Every motor vehicle (except those exempted in Section 2 of this act) shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act if such motor vehicle has since April 23, 1921, used such public streets or highways, or shall actually use them, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouseman, mortgagee or pledgee. But, new and unused motor vehicles in the possession of a dealer solely for the purpose of sale, and used or second-hand motor vehicles which have not theretofore used the public streets or highways of this state which are in the possession of a dealer solely for the purpose of sale and which are duly listed as herein provided, shall not be deemed to be vehicles using the public streets or highways. The driving or operating of a motor vehicle upon the public streets or highways of this state by a motor vehicle dealer or any employee of such motor vehicle dealer for demonstration purposes or for any purpose incident to the usual and customary conduct and operation of his business in which he has been licensed under Mason's Supplement 1940, Section 2686, to engage, or solely for the purpose of moving it from points outside or within the state to the place of business or storage of a licensed dealer within the state or solely for the purpose of moving it from the place of business of a manufacturer, or licensed dealer within the state to the place of business or residence of a purchaser outside the state, shall not be deemed to be using the public streets or highways in the state within the meaning of this act or of Article 16 of the Constitution and shall not be held to make the motor vehicle subject to taxation under this act as one using the public streets or highways; if during such driving or moving the dealer's plates herein provided for shall be duly displayed upon such vehicle. (As amended Act Apr. 10, 1941, c. 176, §2.)

A motor vehicle operated by a licensed dealer under dealer's plates becomes subject to taxation in same manner as any other car immediately upon use for any purpose not exempt under this section. Op. Atty. Gen. (632E-5), Oct. 26, 1939.

A portable welder mounted upon either two or four wheels, making welder mechanism an integral part of the whole, is a trailer subject to registration and tax. Op. Atty. Gen., (632E-33), Jan. 10, 1940.

Use of dealer's plate is permissible: in actual demonstration to a prospective purchaser, purchaser being in car while it is being so demonstrated upon public highways; in calling for a prospective purchaser at his residence or place of business and returning car to dealer's place of business or driving it to residence or place of business of another prospective purchaser; in calling upon a prospective purchaser at his residence or place of business for purpose of demonstrating car to him there, even though he is not taken out in car upon highways; in operating upon public highways for purpose of limbering up motor and other running parts or ascertaining that car runs properly. Op. Atty. Gen. (632A-7), March 21, 1940.

**2688. Duplicate plates.**

Where truck was registered for 1940 in name of owner and a short time thereafter was sold at execution sale but plates were not on truck and owner refused to surrender them and duplicate plates could not be issued in opinion of Attorney General and purchaser applied for registration and paid tax, former owner was not entitled to a refund of tax by surrender of original plates. Op. Atty. Gen., Jan. 16, 1941.

**2689. Transfer of ownership—Procedure—Fees.**—Every owner or transferor of a motor vehicle who fails or delays for more than seven days to surrender the registration certificate and existing number plates as herein provided, before he shall be entitled to sell and assign his right to have the tax paid by him credited to the transferee as herein provided, shall pay to the registrar a fee of 25 cents for each day, not exceeding two days, and if such delay shall continue for 30 days thereafter, then 50 cents per month for each month

or fraction thereof, not exceeding four months of such delay; and every owner or person charged with the duty to register a motor vehicle or pay any tax hereunder who fails to register the same and pay such tax as herein provided before the tax becomes delinquent shall, before he shall be entitled to complete his registration as herein provided, pay to the registrar, a like fee for his delay after the tax has become delinquent. A filing with, or delivery to the registrar of any application, notice, certificate or plates as required by this act shall be construed to be within the requirements of this act if made to the registrar or his deputy at an office maintained therefor, or if deposited in the mail or with a carrier by express with postage or carriage charge prepaid, and properly addressed to the registrar within seven days after the transfer of ownership or other occurrence upon which this act provides for such filing or delivery. (As amended Act Apr. 28, 1941, c. 515, §6.)

**2690. Date payable.—**

Subdivision 1. The tax required under this act to be paid upon a motor vehicle for each calendar year shall become due as soon as such vehicle shall first use the public streets or highways in the state, and upon January 1 thereafter each year. Taxes due upon January 1 shall become payable upon October 1 preceding the calendar year for which they are assessed and shall be payable upon transfer of ownership in the vehicle occurring during the period October 1 to December 31, both dates inclusive. Every owner or person charged with the duty to register a motor vehicle or pay any tax hereunder who fails or delays to register said motor vehicle and pay such tax on or before November 15 preceding the calendar year for which the tax is assessed shall, if such motor vehicle is registered and a tax paid within two days thereafter, pay to the registrar a fee of twenty-five cents for each day of delay; and, if such motor vehicle is registered thereafter and prior to December 1 following, an additional fee of fifty cents; and, if said motor vehicle is registered thereafter and prior to January 1 following, an additional fee of fifty cents. Taxes for the current year shall become delinquent upon the expiration of seven days after the same became due, unless paid.

Subdivision 2. However, if the tax assessed under Mason's Supplement 1940, Section 2674 (a)-1 amounts to more than \$200.00 the amount thereof in excess of \$200.00 may be paid in two equal installments in the year for which such vehicle is licensed, the due date of the first installment shall be on the 1st day of April of the year for which the tax is assessed and of the second installment shall be on the 1st day of July of the year for which the tax is assessed. However, the registrar shall issue no registration certificate until the full amount of the tax has been paid. In lieu of such registration certificate, the registrar shall issue to the owner a receipt for installments paid which receipt shall be displayed upon the windshield of the vehicle as evidence that under the provisions of this section the vehicle may be operated on the streets and highways of this state.

Subdivision 3. For the annual tax paid on any vehicle before the calendar year for which that tax was assessed, the owner of the vehicle who paid the tax shall be entitled to full refund if such vehicle is permanently destroyed or removed from the state before the calendar year for which the tax was paid or if it is not used at all during the calendar year for which the tax was paid, and the owner makes affidavit concerning the non-use as provided by Mason's Supplement 1940, Section 2673.

Subdivision 4. All taxes imposed under the provisions of this act shall be deemed the personal obligation of the registered owner and the amount of such tax, including added penalties for the non-payment thereof, shall be a first lien upon the vehicle taxed, paramount and superior to all other liens thereon whether previously or subsequently accruing there-

on; and in addition to any other remedy herein prescribed, the state shall have a right of action against the owner for the recovery of the amount of any delinquent tax thereon, including the penalties accruing because of the non-payment thereof, or for the enforcement of the tax lien thereon hereby declared, or both, in any court of competent jurisdiction. The county attorney of the county in which such motor vehicle is owned shall perform such service in the matter of the commencement and prosecution of such suit or in the prosecution of any other remedy for the enforcement of such tax as the attorney general may require. (As amended Act Apr. 28, 1941, c. 515, §4.)

**2692. Manufacturers to file statement.—**Every manufacturer of a motor vehicle sold or offered for sale within this state, either by the manufacturer, distributor, dealer or any other person, shall, on or before the first day of August in each year, file in the office of the registrar a sworn statement showing the various models manufactured by him, and the retail list price, rated carrying capacity and manufacturer's shipping weight of each model being manufactured August 1 of that year; and shall also file with the registrar, in such form as manufacturers usually use for advertising, complete specifications of the construction of each model that has been manufactured by him. Upon each change in such price, carrying capacity or weight and upon the manufacture of each new model thereafter, such manufacturer shall in like manner file a new statement setting forth such change. Models shall be deemed similar if substantially alike and of the same make. Models shall be deemed to be corresponding models, for the purposes of taxation under Section 3 of this act, if of the same make and having approximately the same weight and type of body and chassis and the same style and size of motor. The registrar may refuse to register any new or first hand vehicle in this state unless the manufacturer thereof has furnished to the registrar the sworn statement herein provided, for the model of the motor vehicle that is offered for registration. Such list price, rated carrying capacity and listed weight of the vehicle, as set forth in the manufacturer's statement shall be the price, weight or carrying capacity on which the tax of a motor vehicle shall be computed under Section 3 of this act unless grossly at variance with fact. In all instances in which there have been added to a complete vehicle additional parts, equipment or accessories not included in the factory list price upon which the tax is computed in accordance with the requirements of Section 3 of this act, the reasonable cost thereof, if amounting in the aggregate to more than \$50.00 shall be added to the list price upon which the tax is computed. Such added parts, equipment or accessories to the extent in value of \$50.00 shall be exempt from taxation. The registrar shall have authority to fix the value, carrying capacity and weight of any rebuilt or foreign car or any car on which a record of the list price, carrying capacity or weight is not available in his office. (As amended Act Apr. 28, 1941, c. 515, §5.)

Act Apr. 28, 1941, c. 515, §7, provides that all other acts and parts of acts inconsistent herewith [2674(a), 2676(a), 2680, 2689, 2690, 2692] are hereby modified, amended or superseded so far as necessary to give full force and effect to the provisions of this act, the purpose of which is to continue the calendar year as the period for which the motor vehicle registration tax is assessed and the motor vehicle registrations are made, but to advance the date for registration. Section 8, of such act provides that this act shall take effect and be in force from and after October 1, 1941 except as to the provision of Section 5 which shall take effect and be in force from August 1, 1941.

A non-resident motor vehicle owner registering it under a certain classification without calling an application for reciprocity privileges cannot later have registration revoked and obtain a reciprocity permit or obtain a refund of registration tax. Op. Atty. Gen. (632E-32), Dec. 5, 1940.

**2693. Secretary of state to be registrar.**

(b). Employees in various offices of deputy registrars of motor vehicles, including those in Minneapolis, are not

state employees, even though paid in part by state warrants. Op. Atty. Gen., (644), Jan. 8, 1941.

(c). This section constitutes a standing appropriation of fees received for transcripts of record for purpose of paying clerk hire and other expenses of furnishing transcript, though such fees must be paid to state treasurer daily. Op. Atty. Gen. (640a), Jan. 30, 1940.

#### 2695. Violations—Penalties.

A person with an X truck exceeding his 35-mile zone for a purpose other than that permitted by statute, is guilty of a misdemeanor or a gross misdemeanor, depending upon the facts. Op. Atty. Gen. (632E-36), June 27, 1940.

#### 2696. Violations of law; etc.

A person with an X truck exceeding his 35-mile zone for a purpose other than that permitted by statute, is guilty of a misdemeanor or a gross misdemeanor, depending upon the facts. Op. Atty. Gen. (632E-36), June 27, 1940.

#### 2712-1. Chauffeurs' licenses.

Phrase "not more than 60 days in any year" means 60 consecutive days. Op. Atty. Gen. (2911), Sept. 15, 1939. Owner of a grain elevator transporting his own grain purchased from farmers in his own truck was not required to have a license. Op. Atty. Gen., (635d), Jan. 5, 1940.

A pupil, who complies with regulations of Department of Education, but is under 18 years of age and hence does not have a chauffeur's license, cannot transport other pupils and take pay from school district. Op. Atty. Gen. (635e), Aug. 26, 1940.

Driver of city fire truck must have chauffeur's license. Op. Atty. Gen. (635f), Nov. 13, 1940.

#### (4).

A priest using a school bus for purpose of transporting school children from school house to his church for religious instruction must have a chauffeur's license. Op. Atty. Gen. (635h), Oct. 2, 1940.

Act does not apply to pleasure vehicles, registered as such, and which are used only incidentally in transporting students to high school, unless vehicle is used to transport students by an adult person who has contract with school district. Op. Atty. Gen. (635E), Oct. 25, 1940.

**2712-5. Applications and examinations.**—Applications for examination and license hereunder shall be in writing upon such forms and shall contain such needed information as the secretary of state may prescribe, and shall be accompanied by the payment of an examination and license fee of one dollar and fifty cents, except that the fee for a renewal license shall be one dollar. The state treasurer shall maintain a separate fund known as a chauffeurs' license fund, in which all fees so received shall be credited, and the amount necessary for payment of salaries and expenses in connection with this act is hereby appropriated. No fees, except over-payments, that have been paid into this fund shall be refunded, but the secretary of state in his discretion, upon proper application within three months thereafter may grant one re-examination without additional fee to a person who has been refused a license on a previous application. Refunds of over-payments shall be made in the manner provided by law for making refunds and paid out of the chauffeurs' license fund. Any balance remaining in this fund at the end of the calendar year, after the payment of employees' salaries and other expenses of the license division shall be transferred to and deposited in the general fund. (As amended Act Apr. 24, 1941, c. 427, §1.)

**2712-6. Revocation of licenses.**—For sufficient cause upon complaint and after hearing, or upon report of conviction by any court in this state of violation of any provision of the Highway Traffic Regulation Act, or a municipal traffic ordinance, or upon report of conviction of any offense in any other State or in any Province of the Dominion of Canada, which, if committed in this State, would be cause for revocation, the Secretary of State may revoke the license of any chauffeur who, in the judgment of the secretary of state, should not be permitted to continue as a licensed chauffeur, provided, however, that if a licensed chauffeur is convicted in this state of a major offense, revocation by the secretary of state of his chauffeur's license shall be mandatory. For the purposes of this section, the term "major offense" shall be used to refer to any of the following offenses:

(a) Manslaughter resulting from the operation of a motor vehicle;

(b) Driving a vehicle while under the influence of intoxicating liquor or narcotic drug;

(c) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used;

(d) Forfeiture of bail upon three charges of reckless driving all within the preceding twelve months;

(e) Failure of a driver of a motor vehicle involved in an accident to stop and disclose his identity at the scene of an accident resulting in the death or injury of a person.

Whenever a person is brought before any court charged with a "major offense," whether the charge be under state law or municipal ordinance, the court shall, before accepting a plea of guilty or entertaining a judgment of conviction pursuant thereto, inform the defendant that upon conviction not only will he be liable to a penalty, but the chauffeur's license that he may have must be revoked. Whenever in any court a licensed chauffeur is convicted of any violation of the Highway Traffic Regulation Act, or a municipal traffic ordinance, the court shall promptly report such conviction to the secretary of state together with any recommendations that the court may wish to make with reference to the chauffeur's license. Whenever the offense of which the licensed chauffeur is convicted is a "major offense" the court shall, as a part of the penalty, order the convicted chauffeur to return his chauffeur's badge promptly to the secretary of state. Failure on the part of a chauffeur to return the badge promptly to the secretary of state as ordered by the court shall constitute "contempt of court." The revocation of a chauffeur's license upon his conviction of a "major offense" shall be for a period of three, six, nine, or twelve months, the length of the period to be in each particular case as recommended by the court on the basis of the seriousness of the offense and the interest of public safety and welfare.

When at least three months of a period for which a chauffeur's license has been revoked have elapsed, and if the chauffeur's livelihood depends upon his employment as a licensed chauffeur, the secretary of state may, upon recommendation by the court in which the chauffeur was convicted, issue a limited license to such chauffeur on condition that proof of financial responsibility covering the vehicle or vehicles to be operated shall be filed in accordance with the provisions of the financial responsibility act. The secretary of state in issuing such limited license may impose such conditions and limitations as in his judgment are necessary in the interest of public safety and welfare, including re-examination as to the chauffeur's qualifications. Such license may be limited to the operation of particular vehicles, to particular classes of operation, and to particular conditions of traffic.

The badge, issued as evidence of a limited chauffeur's license, shall be of a special design to distinguish it from the regular unlimited chauffeur's license and, for the information of enforcement officers, the chauffeurs operating under such license shall carry on his person at all times when operating a motor vehicle, a certificate issued by the secretary of state indicating the limitations of such license. Such a limited chauffeur's license may also be issued by the secretary of state when in his judgment the privileges of a chauffeur should be limited in that manner because of convictions of other than major offenses against traffic laws or ordinances or other conditions pertaining to the chauffeur's qualifications. (As amended Act Apr. 24, 1941, c. 427, §2.)

If a court convicts a licensed chauffeur of any of offenses enumerated in paragraphs (a) to (e), it is mandatory that he revoke chauffeur's license whether conviction be under a statute or under an ordinance, and if conviction be of any other violation of the provisions of the Highway Traffic Act or of this act, court may in its discretion revoke license or leave it in effect. Op. Atty. Gen. (635d), Nov. 15, 1939.

Though court does not revoke license, secretary of state may demand that chauffeur found guilty of offense

turn in his regular badge and issue to him a limited badge without delaying for interval of 3 months or more, and fee to be charged for limited license and special badge is \$1. Op. Atty. Gen. (635d), Sept. 12, 1940.

Where court decides not to revoke license of a chauffeur, found guilty of an offense, it is not mandatory upon secretary of state that he revoke license. Id.

### 2713. Taking into custody for violation of act—Undertaking to appear, etc.

Inmates of a National Youth Administration Camp while driving government trucks are not employees of the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

## UNIFORM HIGHWAY TRAFFIC ACT

### TITLE II.—OPERATION OF VEHICLES—RULES OF THE ROAD

#### 2720-3. Careless or heedless or dangerous driving—Gross misdemeanor. [Repealed.]

Repealed. Laws 1937, c. 464, §144.

##### 1. In general.

Owner of filling station owes duty to an invitee of exercising ordinary care for his safety. Champlin Refining Co. v. W., (CCA8), 113F(2d)844.

One suddenly confronted by a peril through no fault of his own, who in attempt to escape does not choose best or safest way, should not be held negligent because of such choice, unless it was so hazardous that ordinarily prudent person would not have made it under similar circumstances. Dahlstrom v. H., 295NW508. See Dun. Dig. 7020.

##### 2. Injury to guest or other occupant.

Liability of automobile driver for injuries to guest. Cummings v. T., 10SE(2d)(SC)322.

A person transported for benefit of owner or operator of an automobile is not a guest without payment for his transportation within Texas guest statute. Goldberg v. C., 289NW512. See Dun. Dig. 6975a.

In action for death of passenger in defendant's car based upon excessive speed, failure to keep a proper lookout, negligently driving upon shoulder of road, and failure to reduce speed on return to pavement, evidence held to support verdict for defendant. Dahlstrom v. H., 295NW508. See Dun. Dig. 6975a.

Contributory negligence of guest riding in front seat held properly submitted to jury. Klingman v. L., 296NW528. See Dun. Dig. 7026a.

##### 2½. Acts in emergency.

Law does not require one to choose best way of escape from an imminent peril suddenly created by negligence of another. Stolte v. L., (CCA8), 110F(2d)226.

A verdict must stand where a jury could properly find that plaintiff had made an error in judgment which a reasonable man might make. Norling v. S., 293NW250. See Dun. Dig. 7020.

One faced with an emergency is bound to exercise only that caution and judgment which could be reasonably expected from an ordinarily prudent person under circumstances. Blom v. W., 296NW502. See Dun. Dig. 7020.

##### 4. Contributory negligence.

A passenger in rear seat who is not controlling and has no right of control over driver, and is not aware of danger of collision until collision is unavoidable is not guilty of contributory negligence as a matter of law. Goldberg v. C., 289NW512. See Dun. Dig. 7026a.

A verdict must stand where a jury could properly find that plaintiff had made an error in judgment which a reasonable man might make. Norling v. S., 293NW250. See Dun. Dig. 7020.

Contributory negligence in an emergency is to be determined by whether or not plaintiff exercised the caution and judgment which could reasonably be expected from an ordinarily prudent person under the circumstances. Smith v. C., 296NW132. See Dun. Dig. 7020, 7021.

Last clear chance doctrine and wilful and wanton negligence. 24MinnLawRev81.

##### 4½. Imputed contributory negligence.

Negligence of driver is not imputable to passenger in rear seat. Goldberg v. C., 289NW512. See Dun. Dig. 7038.

Driver's negligence in approaching a railroad crossing could not be imputed to sleeping passengers. Krause v. C., 290NW294. See Dun. Dig. 7038.

A passenger in an automobile is not required to exercise care and caution required of driver at railroad crossing. Lang v. C., 295NW57. See Dun. Dig. 8193.

Driver's negligence at railroad crossing is not imputable to a guest passenger. Id. See Dun. Dig. 7038.

Negligence which is a material element or substantial factor in producing or happening of an injury is proximate cause although there is no physical contact or impact. Smith v. C., 296NW132. See Dun. Dig. 7000.

##### 4¾. Proximate cause.

In action by guest in one automobile against driver of another automobile evidence held not to require submission of contributory negligence to jury. Guin v. M., 288NW716. See Dun. Dig. 7026a.

Question of causal relation is ordinarily one of fact and should be determined by jury in exercise of practical common sense rather than by application of abstract

principles. Sankiewicz v. S., 296NW909. See Dun. Dig. 7011.

Last clear chance doctrine and wilful and wanton negligence. 24MinnLawRev81.

##### 6. Evidence.

In action for death of passenger in automobile in collision on railroad crossing evidence held not to establish that deceased was negligent in riding with host who had drunk beer, there being no testimony that deceased saw him drink or that he was physically under the influence of the liquor. Lang v. C., 295NW57. See Dun. Dig. 8193.

In action for death of a guest passenger in automobile at railroad crossing burden was upon railroad to show that deceased was guilty of negligence. Id. See Dun. Dig. 8201.

##### 7. Res ipsa loquitur.

Res ipsa loquitur doctrine did not apply in action by automobile guest who sat in front seat with driver and had full knowledge as to dangerous curve and speed and every movement of car during progress of trip until accident occurred. Klingman v. L., 296NW528. See Dun. Dig. 7444.

##### 8. Questions for jury.

In automobile collision cases court has adopted a policy of hesitation when contributory negligence as a matter of law is attempted to be founded on estimates of distances. Salters v. U., 292NW760. See Dun. Dig. 41670.

##### 9. Instructions.

It is only when a defendant has been placed in imminent peril by some other person's negligence that emergency instruction may be given; not when he confronts danger by reason of his own conduct. Anderson v. G., 288NW704. See Dun. Dig. 7020.

#### 2720-4. Speed—Reasonable and proper speed—Etc. [Repealed.]

Whether defendant overtaking and crashing into towed coupe while passing through a hamlet was guilty of excessive or negligent speed held for jury. Erickson v. M., 287NW628. See Dun. Dig. 4167e.

#### 2720-8. Vehicles operated by peace officers in performance of duties, Etc. [Repealed.]

In action for death of a fireman riding on rear step or platform of fire truck at time it was struck and overturned at an intersection, court erred in submitting an issue of contributory negligence to jury. Anderson v. G., 288NW704. See Dun. Dig. 4173.

#### 2720-18. Right of way between vehicles or vehicles and street cars at intersections—Etc. [Repealed.]

Negligence in a daylight collision at a street intersection held for jury. Meyer v. A., 287NW680. See Dun. Dig. 4164e.

#### 2720-19. Entering highway from alley, private road or drive—Etc. [Repealed.]

In action by passenger on a street car which collided with a large truck coming out of an alley, negligence of motorman held for jury. Reiton v. S., 288NW155. See Dun. Dig. 4164f.

In action for death of a fireman riding on rear step or platform of fire truck at time it was struck and overturned at an intersection, court erred in submitting an issue of contributory negligence to jury. Anderson v. G., 288NW704. See Dun. Dig. 4173.

##### (a).

Driver of heavy truck was entitled to assume that one approaching highway on a private road would yield right-of-way, at least until a reasonable basis to conclude the contrary appeared, and it was a question for jury to determine whether he was guilty of contributory negligence with respect to defendant who was having trouble to get his truck up steep slope to a level shoulder. Salters v. U., 292NW762. See Dun. Dig. 4164f.

#### 2720-48. Front and rear lamps—Head lamps—Motorcycle lamps—Etc. [Repealed.]

Where there was evidence that unlighted coupe was entirely off travelled lane of highway, and car which had been towing it was two feet nearer center of highway with lights on, violation of statute and proximate cause were questions for jury. Erickson v. M., 287NW628. See Dun. Dig. 4167c.

##### 2720-54. Parking lights. [Repealed.]

Where there was evidence that unlighted coupe was entirely off travelled lane of highway, and car which had been towing it was two feet nearer center of highway with lights on, violation of statute and proximate cause were questions for jury. Erickson v. M., 287NW628. See Dun. Dig. 4167c.

Whether defendant was guilty of negligence in not discovering a towed unlighted coupe stopped on extreme right side of highway on a moonlight night, held for jury. Id.

**TAX ON GASOLINE, ETC., USED FOR MOTOR OR OTHER VEHICLES ON HIGHWAYS.**

**2720-70. Definitions. [Repealed.]**

Repealed. Laws 1941, c. 495.

Tax on fluids not otherwise taxed as gasoline and used as fuel for motor vehicles. Laws 1941, c. 494.

(d).

While §2720-86 indicates an intent that licensing provision shall apply to those persons who engage in business of buying or selling petroleum products as a distributor, division may in its administrative law require an inshipper of furnace oil for its own industrial concern to be licensed. Op. Atty. Gen. (325a-5), Sept. 28, 1939.

**2720-71. Excise tax on gasoline.**—There is hereby imposed an excise tax of four cents per gallon on all gasoline used in producing and generating power for propelling motor vehicles used on the public highways of this state. This tax shall be payable at the times, in the manner, and by persons specified in Mason's Minnesota Statutes of 1927. Section 2720-77, and in Mason's 1940 Minnesota Supplement. Section 2720-72. (As amended Apr. 9, 1941, c. 162, §1.)

A "use" or "privilege" tax is a tax imposed on property when put to use in a manner contemplated by the taxing act. It presupposes ownership, that is, a prior purchase of the property. On the other hand, a "sales" tax is one imposed on property at time of a sale thereof, and amount of the tax may be fixed in the taxing statute by different formulae. State v. Ristine, (DC-Minn), 36F Supp3.

State motor vehicle fuel tax held intended as compensation for use of public roads of state, and legal. Acme Freight Lines v. L., 197So(Fla)499. Cert. den., 61SCR141.

Gasoline held in storage on May 1 is subject to a personal property tax even though gasoline tax has been paid. Op. Atty. Gen., (325), Mar. 1, 1941.

**2720-71a. Certification of amount at time act takes effect—Payment of taxes.**—It shall be the duty of every distributor and of every person who sells gasoline to certify to the commissioner of taxation the number of gallons of gasoline in his possession at the time this act takes effect, reporting same in a manner approved by the commissioner of taxation, and to pay the additional tax herein provided on said gasoline in his possession by not later than the 25th day of the month in which this act takes effect; provided that in such certification each distributor and person selling gasoline who had tax paid gasoline in possession on September 1, 1940, may take credit for the amount thereof against the amount of gasoline required to be certified to the commissioner by this section. (Added Apr. 9, 1941, c. 162, §2.)

**2720-71b. Effective date.**—This act shall take effect the first day of the month following approval thereof by the Governor. (Added Apr. 9, 1941, c. 162, §3.)

**2720-71½. Gasoline distributors to report to oil inspector. [Repealed.]**

Repealed. Laws 1941, c. 495.

**2720-71½a. Excise tax on other motor fuels.**—There is hereby imposed an excise tax of the same rate per gallon as the gasoline excise tax upon all combustible gases and liquids, including liquefied gases, which exist in the gaseous state at a temperature of 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, and any liquid petroleum product or substitute thereof that is used to generate power for the propulsion of motor vehicles upon the public highways of this state, or for use in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state, not otherwise taxed as gasoline. (Act Apr. 28, 1941, c. 494, §1.)

**2720-72. Certified statements by chief oil inspector; etc. [Repealed.]**

Repealed. Laws 1941, c. 495.

Tax paid on gasoline which has been lost by reason of fire, leakage or other circumstance cannot be refunded. Op. Atty. Gen. (324K), Dec. 23, 1940.

**2720-74 to 2720-78. [Repealed.]**

Repealed. Laws 1941, c. 495.

**2720-79. Reimbursements in certain cases—Penalties for false statement. [Repealed.]**

Repealed. Laws 1941, c. 495.

**Editorial note.**—Act Apr. 28, 1941, c. 491, §1, amended Mason's Supplement 1940, §2720, to read as follows: Any person who shall buy and use gasoline for any purpose other than use in motor vehicles or for use in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state, and who shall have paid any excise tax required by this act to be paid directly or indirectly through the amount of such tax being included in the price of such gasoline or otherwise, shall be reimbursed and repaid the amount of such tax paid by him upon presenting to the inspector a verified claim in such form and containing such information as the inspector shall require and accompanied by the original invoice thereof, which claim shall set forth the total amount of such gasoline so purchased and used by him other than in motor vehicles, or for use in machinery operated for the purpose of constructing, reconstructing or maintaining the public highways of this state, and shall state when and for what purpose the same was used. If the inspector be satisfied that the claimant is entitled to payment, he shall approve the claim. Upon the approval of any such claim the inspector shall draw his check on the gas tax account payable to the person entitled thereto. No such repayment shall be made unless the claim and invoice shall be presented to the inspector within four months from the date of such purchase.

Any person who shall buy and use gasoline for aeronautical or aviation purposes, may at the time of purchase or thereafter, fill out and file with the inspector a verified statement setting forth the total amount of gasoline so bought and used by him for aeronautical or aviation purposes and such other information as the inspector shall require, which statement shall be accompanied by the original invoice therefor. If claim for the repayment of such tax is not made within four months from the date of such purchase, all excise taxes collected on such gasoline bought and used for aeronautical or aviation purposes shall be placed in a separate fund and shall be expended solely for any one or more of the following purposes or objects:

(1) The marking of state trunk highways, or land or buildings nearby or adjacent thereto, with navigation markers indicating such things as highway numbers, towns, distances, direction indicators and other similar aviation aids.

(2) The acquisition, construction and maintenance of strip landing fields nearby or adjacent to state trunk highways in such locations as the Minnesota Aeronautics Commission may approve.

(3) The maintenance and support of the Minnesota Aeronautics Commission.

Funds may be expended for (1) or (2) above, by the Commissioner of Highways without further appropriation, but funds may be used for (3) above only in such amounts and manner as the legislature may from time to time specifically direct.

Every person who shall make any false statement in any claim or invoice presented to the inspector or who shall knowingly present to the inspector any claim or invoice containing any false statement, or shall collect, or cause to be paid to him or to any other person any such refund without being entitled thereto, shall forfeit the full amount of such claim and be guilty of a misdemeanor.

Act Apr. 14, 1941, c. 220, authorizes a refund of gasoline tax to a village of less than 600 inhabitants, in a county containing 13 townships and having population of 12,900 to 13,000, where village failed to make application within 4 months.

**Notes of Decisions**

Government owned federal land bank is exempt from gasoline tax under §2720-80, but it cannot obtain a refund by proceeding under this section. Op. Atty. Gen. (324e-1), Oct. 17, 1939.

Tax paid on gasoline which has been lost by reason of fire, leakage or other circumstance cannot be refunded. Op. Atty. Gen. (324K), Dec. 23, 1940.

**2720-79½. Distributors to report the amount on hand. [Repealed.]**

Repealed. Laws 1941, c. 495.

**2720-80. Gasoline used by United States not subject to tax—Refunds. [Repealed.]**

Repealed. Laws 1941, c. 495.

Prior to amendment of October 9, 1940, §10 of the Hayden-Cartwright Act (Mason's U.S.C.A. 4; 12) did not constitute a consent by the United States to the imposition and collection of Minnesota motor fuel tax on gasoline sold at Fort Snelling Military Reservation. State v. Ristine, (DC-Minn), 36FSupp3.

Government owned federal land bank is exempt from gasoline tax, but cannot proceed solely under §2720-79 to obtain a refund. Op. Atty. Gen. (324e-1), Oct. 17, 1939.

**2720-81. Gasoline used in foreign or interstate commerce; etc. [Repealed.]**

Repealed. Laws 1941, c. 495.

**2720-82. Tax in lieu of other taxes; etc. [Repealed.]**

Repealed. Laws 1941, c. 495.  
Gasoline held in storage on May 1 is subject to a personal property tax even though gasoline tax has been paid. Op. Atty. Gen., (325), Mar. 1, 1941.

**2720-84 and 2780-85. Repealed.**

Repealed. Laws 1941, c. 495.

**2720-86. Dealers must be licensed. [Repealed.]**

Repealed. Laws 1941, c. 495.  
While section indicates an intent that licensing provision shall apply to those persons who engage in business of buying or selling petroleum products as a distributor, division may in its administrative law require an inshipper of furnace oil for its own industrial concern to be licensed. Op. Atty. Gen. (325a-5), Sept. 28, 1939.

**2720-87. Unlicensed dealers shall not be inspected. [Repealed.]**

Repealed. Laws 1941, c. 495.

**2720-88. Licenses. [Repealed.]**

Repealed. Laws 1941, c. 495.  
(b).  
A general regulation of commissioner of taxation that all applicants must furnish bonds entirely irrespective of proof of financial responsibility would be contrary to legislative intent, notwithstanding use of word "may". Op. Atty. Gen. (324), Aug. 12, 1940.

**2720-89 to 2720-91. [Repealed.]**

Repealed. Laws 1941, c. 495.

**2720-92b. Commissioner of highways, state treasurer and state auditor to apportion funds.**—On or before the first Tuesday in April of each year the commissioner of highways, the state treasurer and the state auditor shall estimate the probable sum of money that will accrue during the current calendar year to the state road and bridge fund from the excise tax on gasoline, and after first setting aside \$1,200,000 to be expended for state aid roads, shall apportion the balance of the sum among the several counties of the state for county aid roads as herein provided and the commissioner of highways shall forthwith send a statement of such apportionment to the state auditor and to the county auditor of each county showing the amount apportioned to each county during such year for county aid roads. (As amended Apr. 9, 1941, c. 160, §1.)

**2720-92d. Limitations of amount to each county.**—Not less than three-fourths of one per cent nor more than three per cent of the moneys accruing to the state road and bridge fund apportioned for expenditure on county aid roads shall be apportioned to any one county in any one year. In the making of such apportionment regard shall be had to the mileage of county and town roads and the traffic needs and conditions of the respective counties. (As amended Apr. 9, 1941, c. 160, §2.)

**2720-93. Use and disposition of gas tax.**—The money apportioned to each county under the provisions hereof and not used to pay interest or principal on county road or bridge bonds as hereinafter provided, shall be used solely in the construction, improvement and maintenance of county aid roads therein, including bridges, culverts and other structures appurtenant to such county aid roads, and shall be expended by the county board on such county aid roads as it shall determine and in the manner herein provided. All county aid roads constructed under the provisions of this act shall be constructed under the supervision and according to plans and specifications made by the county board. Provided that in any county where 40 per cent or more of the real estate taxes for any year are unpaid on the date that taxes for said year become delinquent according to law, the county board of such county may, in the year such taxes become delinquent, use at least 50 per cent of the moneys so appropriated to said county for the purpose of paying any part of the interest or principal on bonds or warrants heretofore or hereafter issued by the county for road or bridge purposes.

In any county where 30 per cent or more of the real estate taxes for any year are unpaid on the date

the taxes of said year become delinquent according to law, the county board of such county may, in the year such taxes become delinquent, use at least 25 per cent of the money so apportioned to said county for the purpose of paying any part of the interest or principal on bonds or warrants heretofore or hereafter issued by the county for road or bridge purposes. The provisions of this subdivision are hereby declared to be an emergency measure and shall be in force, and every law now in force inconsistent with this subdivision is hereby suspended, until April 20, 1943. (As amended Act Apr. 21, 1941, c. 339, §1.)

Provided, further, that in any county having an assessed valuation of less than \$750,000 the county board, by unanimous vote and with the approval thereof by the village council of any village of said county, may designate as a county aid road any street, streets, or parts of streets within the platted or unplatted portion of any such village, and may appropriate such sums of money for improving the same as they may, on motion, determine. Provided, further, that the county board by a majority vote may rescind said designation.

Provided, further, that in any county having an area of not less than 1700 square miles and not more than 2000 square miles, and having not less than 50 full or fractional Government townships and not more than 60 full or fractional Government townships, and having an assessed valuation of not less than \$2,500,000 and not more than \$3,000,000, the county board thereof, by unanimous vote thereof, may transfer 60 per cent of the money so appropriated to the county aid road and bridge fund of the county to the general road and bridge fund of the county. (As amended Apr. 9, 1941, c. 129, §1.)

Act Apr. 21, 1941, c. 339, §2, repeals section 2720-94(a) of Mason's Supplement 1940.

**2720-94a. Emergency act. [Repealed.]**

Repealed. Laws 1941, c. 339.

**2720-96. Unorganized townships.**

County commissioners may spend money in county road and bridge fund for maintaining and snow plowing town roads in unorganized townships. Op. Atty. Gen., (377a-11), Mar. 3, 1941.

**FARM TRACTOR FUEL**

**2720-100. Definitions.**—The words, terms and phrases in this Act are for the purposes hereof defined as follows:

(a) "Farm tractor fuel A," by whatever name called, means and includes any liquid prepared, advertised, offered for sale, and sold for use as or used for the generation of power for the propulsion of tractors, that when tested by the methods of the petroleum division of the bureau of mines, United States Government, and the American Society for Testing Material (A.S.T.M.) meets the following specifications:

1. Shall be free from water and suspended matter.
2. The initial boiling point shall not be lower than 225 degrees Fahrenheit.
3. When ten per cent has been recovered in the receiver the temperature shall not be lower than 276 degrees Fahrenheit.
4. When 95 per cent has been recovered in the receiver the temperature shall not be lower than 464 degrees Fahrenheit.
5. The end point shall not be higher than 540 degrees Fahrenheit.
6. Shall be colored in a manner approved by the Commissioner of Taxation.

(b) "Crude petroleum farm tractor fuel" means and includes any basic petroleum product in its natural, undeveloped and unblended state, and when offered for sale, sold for use as or used for the generation of power for the propulsion of tractors, and shall meet the following specifications:

1. It shall be free from water and suspended matter.
2. Upon distillation, when 95 per cent has been recovered in the receiver the temperature shall not be

lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit, or if less than 95 per cent is recovered in the receiver the end point shall not be lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit.

3. After distillation to the end point, residue shall not exceed three per cent.

4. Shall be colored in a manner approved by the Commissioner of Taxation.

(c) "Farm Tractor Fuel B" means and includes any processed or unprocessed petroleum product prepared, advertised, offered for sale, sold for use as or used for the generation of power for the propulsion of tractors, that when tested by the methods of the petroleum division of the bureau of mines, United States Government, and the American Society for Testing Material (A.S.T.M.) meets the following specifications:

1. It shall be free from water and suspended matter.

2. Upon distillation, when 95 per cent has been recovered in the receiver the temperature shall not be lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit, or if less than 95 per cent is recovered in the receiver the end point shall not be lower than 464 degrees Fahrenheit nor higher than 540 degrees Fahrenheit.

3. After distillation to the end point, residue shall not exceed three per cent.

4. Shall be colored in a manner approved by the Commissioner of Taxation. (As amended Apr. 2, 1941, c. 116, §1.)

**2720-100a. Oil inspection division to make rules and regulations.**—The Commissioner of Taxation shall have the power and authority to make all reasonable rules and regulations for the enforcement of this act. (As amended Apr. 2, 1941, c. 116, §2.)

**2720-100b. Farm tractor fuel to be inspected.**—All farm tractor fuels, as defined herein, shall be subject to the laws of the State of Minnesota with reference to the inspection of petroleum products and shall be subject to the same fees for inspection as is provided for in the inspection of gasoline and kerosene. (As amended Apr. 2, 1941, c. 116, §3.)

**2720-100c. Not to be subject to tax.**—Farm tractor fuels, as herein defined, may be inshipped into and sold in the State of Minnesota and shall not be subject to the Minnesota state gasoline tax; provided, however, that when any such tractor fuels are used for the operation of machinery for the purpose of constructing, reconstructing, or maintaining the public highways, the product will then be considered gasoline for purposes of taxation and shall be taxed in accordance with existing laws and/or rules and regulations issued by the Commissioner of Taxation. (As amended Apr. 2, 1941, c. 116, §4.)

**2720-100d. Blending prohibited.**—Blending of farm tractor fuels with taxable petroleum products is prohibited. (As amended Apr. 2, 1941, c. 116, §5.)

**2720-100e. Violations—Penalties.**—(1) Any person who shall inship, sell or blend farm tractor fuels in violation of the provisions of this act shall be guilty of a gross misdemeanor and such inshipment, sale or blending shall be sufficient cause for cancellation of a distributor's license.

(2) Any person who operates any motor vehicle on a public highway, except a farm tractor occasionally run on the highway in actual farm operation, on any tractor fuel defined in this act shall be guilty of a misdemeanor and upon conviction thereof his current motor vehicle license and license plates shall be cancelled, forfeited and surrendered for the balance of the year; and the court in passing sentence shall require surrender of the license plates and fix a period of not less than sixty days nor more than six months during which that person shall not be entitled to apply for a new motor vehicle license or plates, and shall

notify the Secretary of State thereof. (As amended Apr. 2, 1941, c. 116, §6.)

**2720-100e1. Statement filed.**—Every person who sells farm tractor fuel shall file with the Commissioner of Taxation on or before the 25th day of each month a statement under oath on forms to be prescribed by the Commissioner of Taxation setting forth (1) the amount of such fuel purchased by him during the preceding month, the dates of such purchases, and the name and address of the seller; (2) the amount of such fuel sold by him during the preceding month, the dates of such sales and the name and address of the purchaser and the amount sold to each. At the time of every such sale the purchaser shall deliver to the teller, on forms to be prescribed by the Commissioner of Taxation, a statement of the amount of such fuel purchased, and the dates thereof, and a declaration that such fuel is to be used exclusively in farm tractors. One copy of said statement shall be retained by the seller and the original filed with the Commissioner of Taxation at the time of filing the sworn statement required by this section. Any person violating the provisions of this section, and any person making a false statement on any of the forms required by this section shall be guilty of a gross misdemeanor. (Added Apr. 2, 1941, c. 116, §7.)

**2720-100e2. Provisions separable.**—If any section, provision, or part of this act, or any application thereof, shall be declared unconstitutional or invalid, it shall not in any way affect any other section, provision, or part hereof of any other application hereof. (Added Apr. 2, 1941, c. 116, §8.)

#### SAFETY RESPONSIBILITY ACT

##### **2720-102. Drivers license forfeited when.**

Where a person is convicted for first time of driving while under influence of intoxicating liquor and it is recommended by trial court that driver's license be not revoked, commissioner of highways is without power to revoke license, or to require such person to show financial responsibility. *Ausman v. H.*, 292NW421.

Where a court has not by order or recommendation revoked a license, it is duty of traffic engineer to see that financial responsibility provision is complied with, and he can then issue a license. *Op. Atty. Gen.*, (291f), Oct. 6, 1939.

Driver's license may not be revoked for first offense of drunken driving unless recommended by court and this is true as to violation of a city ordinance. *Op. Atty. Gen.*, (291f), June 12, 1940, reversing *Op. Atty. Gen.*, May 12, 1939, Sept. 12, 1939, and Oct. 6, 1939.

##### **2720-103. Driver's license suspended when.**

Fees collected pursuant to §§2720-103 and 2720-108 are for use of drivers' license division of state highway department in administration of Drivers' License Law and Safety Responsibility Act, but such fees as collected should be deposited with state treasury each day and properly credited by him to fund created by §2720-146a as provided by §53-18q. *Op. Atty. Gen.* (454-E), Jan. 10, 1940.

##### **2720-104. Motor vehicles operated with permission of owner.**

Where son obtained permission to use father's automobile for trip to Minneapolis from Duluth to attend football game, intending not to go to Minneapolis but to drive some friends to Chicago, and met with an accident while enroute to Chicago, he was not using the car with his father's permission, expressed or implied, at time of accident, within omnibus clause of insurance policy. *Liberty Mut. Ins. Co. v. S.*, (DC-Minn), 34FSupp 885.

Where insured's son met with accident while using insured's automobile, and actions for injuries were instituted in state court by the son's guests at time of accident, insurer could maintain proceeding under federal declaratory judgment act for determination of liability under policy. *Id.*

If a carrier leases his vehicles to another carrier or to a shipper he should do so under such terms and conditions as will make operations conducted by such vehicles operations of such other carrier or shipper; otherwise operations will be his. *U. S. v. Steffke*, (DC-Minn), 36FSupp257.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. *Kangas v. W.*, 291NW292. See *Dun. Dig.* 5834a.

**2720-105. Non-resident owner to be responsible.**

Parking place at gasoline service station was not a "public highway" within meaning of New York statute, allowing service on secretary of state in case of accidents involving vehicles driven by non-residents. *Finn v. S.*, (DC-NY), 35FSupp638.

Where tire on defendant's truck went flat near plaintiff's service station, and he drove into station to have tire repaired, and while plaintiff was inflating tire lock rim was forced off injuring him, such accident could not be construed as having arisen from defendant's use of the public highway. *Id.*

Where at time accident happened statute provided for service on secretary of state, and at time suit was begun law had been changed so as to require service on commissioner of motor vehicle department, nonresident defendant had no substantive right requiring service on secretary of state, nor was he prejudiced by service on commissioner rather than secretary, where both statutes provided for mailing copy of summons and complaint to him. *Zavis v. W.*, (DC-Wis), 35FSupp689.

This law was enacted for protection of persons who might be injured, rather than to provide any convenience for nonresident user of highways. *Id.*

There is no question as to the power of the legislature to pass such a law. *Id.*

Georgia Non-resident Motorist Act is constitutional. *Lloyd Adams, Inc. v. L.*, 10SE(2d)(Ga)46.

Provision for substituted service of process in action against non-resident user of highway in state applies to action in which an award of workmen's compensation is sought. *Maddry v. M.*, 197So(La)651.

**2720-108. Commissioner to furnish record.**

Fees collected pursuant to §§2720-103 and 2720-108 are for use of drivers' license division of state highway department in administration of Drivers' License Law and Safety Responsibility Act, but such fees as collected should be deposited with state treasury each day and properly credited by him to fund created by §2720-146a as provided by §53-18q. *Op. Atty. Gen.* (454-E), Jan. 10, 1940.

**2720-113. Motor vehicle liability policy.**

Policy which required insured to cooperate with insurer held one "required" by New Jersey financial responsibility statute, and hence liability of insurer was absolute and lack of cooperation was not a defense. *Merchants Indemnity Corp. v. P.*, (CCA3), 113F(2d)4.

**DRIVERS LICENSE LAW**

**2720-143a. Persons in military or naval forces—Exemptions—Statement for certificate of registrar.**—Any person who is engaged in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the United States, and who owns and is duly licensed under the laws of another state to operate a motor vehicle upon the highways thereof, may operate such motor vehicle personally or by his authorized driver upon the streets and highways of townships, villages and cities in this state, subject to the following conditions and limitations, to-wit:

(a) That the exemptions provided by this act as hereinafter limited shall be operative as to a motor vehicle owned by such member of the army or navy only during the remainder of the year for which such motor vehicle is licensed in such other state.

(b) That any such motor vehicle so operated in this state by any such member at all times shall carry and display all number plates or like insignia required by the laws of the state in which such motor vehicle is registered.

(c) That such motor vehicle owner shall file with the registrar of motor vehicles such proof of military or naval service as the registrar may have required.

(d) That such motor vehicle owner shall first file with the registrar of motor vehicles in this state an instrument in writing, subscribed by him and duly acknowledged before a notary public or other officer with like authority, setting forth the name and address of the owner and of each person having any interest in such motor vehicle, the name and address of the person from whom such motor vehicle was purchased or acquired, the name of the manufacturer and of the motor vehicle if it has a name, the year when manufactured, the serial number or other number and model identifying such motor vehicle, the weight in pounds of such motor vehicle, and the number of cylinders of the motor engine. Said written

instrument shall also contain substantially the following:

"The undersigned owner of the above described motor vehicle hereby consents and agrees that the use and operation of said motor vehicle inside the State of Minnesota shall always be subject to all the laws, ordinances, rules, and regulations applicable to like operation thereof by a citizen and resident of the State of Minnesota except as it may be expressly provided otherwise by the laws of Minnesota. The undersigned owner hereby consents to be sued or otherwise proceeded against, either civilly or criminally, at any place in Minnesota where the above described motor vehicle is operated, upon any claim or cause of action arising from such operation, in the same manner as a Minnesota citizen and resident owner and operator of a like motor vehicle might be sued or proceeded against in like circumstances. And in any such civil proceedings, legal process and other notices or papers may be served upon the undersigned owner of the above described motor vehicle by depositing a copy thereof in the United States mails, properly enveloped, sealed, postage prepaid, and addressed to the undersigned owner at his above stated address or at such other address as he may have later filed in writing supplementary to this agreement. Such service shall be deemed personal service, and shall have the same force and effect as like process or notice served personally upon a motor vehicle owner residing in and being a citizen of the State of Minnesota." (Act Apr. 16, 1941, c. 275, §1.)

**2720-143b. Same—Certificate of registrar—Issuance.**—As soon as any motor vehicle owner entitled to the privileges herein extended shall have complied with the provisions hereof the registrar of motor vehicles shall issue to him a certificate stating that he is entitled to operate such motor vehicle within this state during the time authorized hereunder; but subject, nevertheless, to suspension, revocation or cancellation for any cause that would justify similar action with respect to any motor vehicle license or registration issued to any citizen or resident of this state. Such certificate shall be prima facie evidence that the motor vehicle therein described may be lawfully operated in this state. When any change shall have been made in the ownership, or foreign license or number plates, of any motor vehicle operating in this state under a certificate as above provided, said certificate shall be void, and within seven days thereafter shall be surrendered to the registrar of motor vehicles. (Act Apr. 16, 1941, c. 275, §2.)

**2720-143c. Same—Operating without certificate—Penalties.**—Any foreign motor vehicle operating at any time without such certificate or other lawful authorization shall be subject to seizure and the driver thereof to arrest by any law enforcing officer of this state; and upon conviction of such driver for operating in this state without license, such motor vehicle may be sold in the same manner as on execution sale for debt and the proceeds may be applied to satisfy any penalty or fine imposed and to pay any costs or expenses incurred in connection with such arrest, seizure, and sale. (Act Apr. 16, 1941, c. 275, §3.)

**2720-143d. Same—False statement for certificate—Felony.**—Any person who files any statement or written instrument hereinabove required, knowing that the same is false or fraudulent in whole or in part, shall be guilty of a felony; and such felony shall be deemed to have been committed at the time when and place where such false or fraudulent statement was filed in this state. (Act Apr. 16, 1941, c. 275, §4.)

**2720-143e. Same—Rules and regulations of registrar.**—The registrar of motor vehicles may promulgate such rules and regulations, from time to time, as may be reasonably necessary to accomplish the purpose of this act. (Act Apr. 16, 1941, c. 275, §5.)

**2720-143f. Same—Application of act.**—This act shall apply only to passenger motor vehicles which are not used in transporting persons or property for hire. (Act Apr. 16, 1941, c. 275, §6.)

**2720-144a. Who may not receive driver's license.**—The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of 15 years; nor to any person under 18 years unless the application for license is approved by the father of the applicant, if the father is living and has custody of the applicant, otherwise by the mother or guardian having the custody of such minor, or in the event a person under the age of 18 has no living father, mother or guardian, the license shall not be issued to such person unless his application therefor is approved by his employer.

(2) To any person whose license has been suspended during the period of suspension except that a suspended license may be reinstated during the period of suspension upon the licensee furnishing proof of financial responsibility in the same manner as provided in the Safety Responsibility Act.

(3) To any person whose license has been revoked except upon furnishing proof of financial responsibility in the same manner as provided in the Safety Responsibility Act and if otherwise qualified.

(4) To any person who is an habitual drunkard as determined by competent authority or is addicted to the use of narcotic drugs.

(5) To any person who has previously been adjudged insane, inebriate, epileptic or feeble-minded unless the Department is satisfied that such person is competent to operate a motor vehicle with safety to persons or property.

(6) To any person who is required by this act to take an examination, unless such person shall have successfully passed such examination.

(7) To any person who is required under the provisions of the safety responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof.

(8) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

(9) To any person when, in the opinion of the commissioner, such person is afflicted with or suffering from such physical or mental disability or disease as will affect such person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways; nor to a person who is unable to read and understand official signs regulating, warning and directing traffic. (As amended Act Apr. 28, 1941, c. 517, §1.)

**2720-145b. Revocation of licenses.**

Where a person is convicted for first time of driving while under influence of intoxicating liquor and it is recommended by trial court that driver's license be not revoked, commissioner of highways is without power to revoke license, or to require such person to show financial responsibility. *Ausman v. H.*, 292NW421. See Dun. Dig. 41677.

Driver's license may not be revoked for first offense of drunken driving unless recommended by court, and this is true as to violation of a city ordinance. Op. Atty. Gen., (291f), June 12, 1940, reversing Op. Atty. Gen., May 12, 1939, Sept. 12, 1939, and Oct. 6, 1939.

**2720-145d. Petition for reinstatement of licenses.**

Where commissioner revoked driver's license for first offense of drunken driving without recommendation by the court to that effect, such license should be reinstated. Op. Atty. Gen., (291f), June 12, 1940.

**2720-146a. Moneys to be paid into state treasury.**

Fees collected pursuant to §§2720-103 and 2720-108 are for use of drivers' license division of state highway department in administration of Drivers' License Law and Safety Responsibility Act, but such fees as collected should be deposited with state treasury each day and properly credited by him to fund created by §2720-146a as provided by §53-18q. Op. Atty. Gen. (454-E), Jan. 10, 1940.

**HIGHWAY TRAFFIC REGULATION ACT**

**ARTICLE I.—WORDS AND PHRASES DEFINED**

**2720-151. Definitions.**

(4).

In action for death of fireman riding on rear step of fire truck when it was struck at an intersection by defendant's automobile while he was driving with car window closed and radio on, it was error to submit question of emergency to jury in connection with negligence of defendant. *Anderson v. G.*, 288NW704. See Dun. Dig. 4173.

(32).

Phrase "intended for the use of pedestrians", refers to an area actually in use at time being by pedestrians rather than to some indefinite and unascertained strip which may subsequently come into use for a pathway or sidewalk. *St. George v. L.*, 296NW523. See Dun. Dig. 4166.

(30).

If there is no "sidewalk" or path, there is no "crosswalk." *St. George v. L.*, 296NW523. See Dun. Dig. 4166.

**ARTICLE II.—OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS**

**2720-158. Not to restrict local authorities.**

City of Minneapolis has power to regulate parking, but no power to tax it. *Hendricks v. C.*, 290NW428. See Dun. Dig. 4171a.

It does not appear that fee of five cents, to be charged for parking regulated by meters, so much exceeds cost of installation, maintenance and regulation of meters as to result in a tax and condemn whole project as for revenue rather than regulation. Id. See Dun. Dig. 4171a.

Local bodies may regulate angle or parallel parking on streets and roadways other than state trunk highways without approval of state highway commissioner. Op. Atty. Gen. (989-a-16), Nov. 29, 1940.

**ARTICLE III.—TRAFFIC SIGNS, SIGNALS AND MARKINGS**

**2720-160. Traffic signs, signals, and markings.**

Crossing held not extra-hazardous so as to require more than ordinary highway and railroad signs at crossing, as affecting motorist injured by running into 19th car of train. *Krause v. C.*, 290NW294. See Dun. Dig. 8174.

**2720-161. Commissioner to place signs and traffic control devices on trunk highways.—**

(a) The commissioner shall place and maintain such traffic-control devices, conforming to the manual and specifications, upon all state trunk highways as he shall deem necessary to indicate and to carry out the provisions of this act or to regulate, warn, or guide traffic; provided, however, said commissioner may construct and maintain signs at the entrance of each city, village or borough, which sign shall have placed thereon the name of the city, village or borough and the population thereof; and provided further that the commissioner may construct and maintain other directional signs upon the trunk highways and such signs shall be uniform. (As amended, Act Apr. 24, 1941, c. 419, §1.)

(b) \* \* \* \* \*

**ARTICLE IV.—ACCIDENTS**

**2720-168. Accidents.**

(a).

Mere requirement of stopping in case of accident without indication of what the driver is to do, held not void for uncertainty, in view of other provisions and general purpose of act. *State v. M.*, 102Pac(2d)(Idaho)915.

**2720-173. Report of accidents to police and highway department—Confidential.—**

Subdivision 1. \* \* \* \* \*

Subdivision 8. All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the department for accident prevention purposes, except that the department and any law enforcement department of any municipality or county in this state shall upon written request of any person involved in an accident disclose to such person, his executor, administrator or legal counsel, the name and address of any person or persons involved in an accident, the name and address of any witnesses to said accident, the name and address of any officer who has investigated said accident, the license number of any motor vehicle involved therein and the date

and place of such accident. No such report or contents thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, and no person in any trial or action shall be examined or testify as to such report nor as to the making thereof or the contents thereof, except that the department shall furnish upon demand of any person who has, or claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such report be made to the department. Disclosing any information contained in any accident report except as provided herein is unlawful and a misdemeanor. (As amended Act Apr. 25, 1941, c. 439, §1.)

Whether an officer may testify to facts within his knowledge, if called as a witness, is a question for the court, but statute makes it clear that report of accident shall not be used in evidence. *Op. Atty. Gen.*, (989a-1), Oct. 26, 1939.

#### ARTICLE V.—CRIMINAL NEGLIGENCE, DRIVING WHILE INTOXICATED AND RECKLESS DRIVING

**2720-176. Person under influence of drugs or liquor prohibited from driving vehicle.**—(a). It is unlawful and punishable as provided in subdivision (b) of this section for any person who is an habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive or operate any vehicle within this state.

(b). Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than ten days nor more than 90 days, or by a fine of not less than \$10.00, nor more than \$100.00. On a second subsequent conviction he shall be punished by imprisonment for not less than 30 days nor more than 90 days, or a fine of not less than \$25.00 nor more than \$100.00, and his license to drive shall be revoked for not less than 90 days. (Act Apr. 28, 1921, c. 552, §1.)

Where a person is convicted for first time of driving while under influence of intoxicating liquor and it is recommended by trial court that driver's license be not revoked, commissioner of highways is without power to revoke license, or to require such person to show financial responsibility. *Ausman v. H.*, 292NW421. See Dun. Dig. 41677.

Prohibition and penalty against driving while intoxicated is "regulation" within title. *State v. Mee*, 292NW (SD)875.

Driver's license may not be revoked for first offense of drunken driving unless recommended by court, and this is true as to violation of a city ordinance. *Op. Atty. Gen.*, (291f), June 12, 1940, reversing *Op. Atty. Gen.*, May 12, 1939, Sept. 12, 1939, and Oct. 6, 1939.

Commissioner must revoke license for a second offense, though first offense occurred prior to passage of Laws 1939, Chapter 430. *Op. Atty. Gen.* (291-f), July 15, 1940.

#### **2720-177. What is reckless driving—Penalty.**

Kansas statute providing that person driving vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property is guilty of reckless driving is not void for uncertainty. *State v. Davidson*, 105Pac(2d)(Kan)876.

#### ARTICLE VI.—SPEED RESTRICTIONS

##### **2720-178. Speed limitations.**

Conflict in evidence in respect to collision between two automobiles at intersection of two state highways, within limits of a city, made defendant's negligence and plaintiff's decedent's contributory negligence proper jury issues. *Ost v. U.*, 292NW207. See Dun. Dig. 41676.

Where one defendant parked his gravel truck on right lane of a paved highway at night time without setting out flares for purpose of adjusting a loose board on end of truck, and plaintiff passenger and guest of such defendant alighted for purpose of assisting and while standing on pavement back of rear right two wheels of truck was run into by automobile approaching from rear and driven by another defendant, issues of negligence of each defendant, its causal proximity, and plaintiff's contributory negligence, were all for the jury. *Anderson v. J.*, 294NW224. See Dun. Dig. 41676.

Whether it was negligence as to a guest to drive in nighttime at speed of 30 to 35 miles per hour more than 3½ miles over a paved highway on which there were patches of ice which were difficult to see because of occasional snow flurries, and car skidded on ice patch and hit telephone pole, held for jury. *Schultz v. R.*, 296 NW532. See Dun. Dig. 41676.

##### (a).

Although a truck driver got his car off pavement and entirely onto shoulder, in order to avoid a skidding car approaching from front, it should be left to jury whether, his speed being admittedly not less than 32 miles per hour, it was negligent for him not to have stopped his car. *Schweikert v. P.*, 289NW828. See Dun. Dig. 41676.

##### (c).

It is for jury to determine whether or not it is contributory negligence to drive a motorcycle at a speed of 30 to 40 miles an hour up to an intersection protected by stop sign when first view cyclist has of intersecting road cannot be had before he is in two rods of intersection. *Fickling v. N.*, 294NW848. See Dun. Dig. 41646.

##### (h) (1937 Act).

That there was an accident does not establish violation of statute by plaintiff or that speed was not decreased sufficiently. *Norling v. S.*, 293NW250. See Dun. Dig. 41676.

#### ARTICLE VII.—DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING, ETC.

##### **2720-183. Shall pass on right side.**

In head on collision between motorcycle and automobile passing another car, negligence and contributory negligence held for jury. *Stolte v. L.*, (CCA8), 110F(2d) 226.

Negligence and contributory negligence in head-on collision on a curve in winter time, held for jury. *Sankiewicz v. S.*, 296NW909. See Dun. Dig. 4163.

#### ARTICLE VIII.—TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

##### **2720-190. Signals.**

Statute requiring driver to make right turn as close as practical to right-hand curb or edge of roadway, is not void for uncertainty. *State v. Davidson*, 105Pac(2d)(Kan)876.

#### ARTICLE IX.—RIGHT-OF-WAY

##### **2720-196. Right-of-way.**

In collision between plaintiff's truck on a much used county road and defendant's truck travelling on a little used township road concealed somewhat by weeds, negligence and contributory negligence held for jury. *Lee v. O.*, 289NW63. See Dun. Dig. 41646.

Conflict in evidence in respect to collision between two automobiles at intersection of two state highways, within limits of a city, made defendant's negligence and plaintiff's decedent's contributory negligence proper jury issues. *Ost v. U.*, 292NW207. See Dun. Dig. 41646.

##### (a).

Duty to give right of way to vehicle which has entered intersection must yield to the provision that where vehicles enter an intersection at approximately the same time, the vehicle on the left shall give way to that on the right; and driver approaching intersection, where view to right is obstructed, cannot claim right of way where he enters intersection at same instant that vehicle coming from his right enters it and a collision results. *Walkup v. B.*, (CCA8), 111F(2d)789.

Failure of plaintiff to look second time before entering an intersection in which he had right of way, held an item of evidence for jury to consider in determining whether there was contributory negligence. *Norling v. S.*, 293NW250. See Dun. Dig. 41646.

A driver about to cross intersection at a lawful rate of speed and having right of way is not guilty of contributory negligence as a matter of law, where he looked to his left 10 to 20 feet before reaching intersection and had a view of 165 feet in which he did not see defendant, then proceeded into intersection without looking to his left again and defendant, by unanticipated and excessive speed, came from a point beyond range of visibility when observation was made. *Kraus v. S.*, 293NW253. See Dun. Dig. 41646.

##### **2720-197. Right-of-way at intersections.**

Contributing negligence of driver making a left turn from a trunk highway onto an intersecting road does not appear as a matter of law where it is a question of fact whether defendant's car was visible at time turn was commenced or was then so far distant, that it might appear safe to make turn. *Dahl v. C.*, 289NW522. See Dun. Dig. 4164.

In a head-on collision just as plaintiff was completing a left turn, defendant coming over a small hill, contributory negligence held for jury. *Hayward v. V.*, 293 NW246. See Dun. Dig. 4163.

##### **2720-198. Thru highways.**

In passing upon contributory negligence of a motor cyclist approaching a blind intersection jury might consider that plaintiff had right to assume until discovering the contrary that motor vehicles traveling upon intersecting road would heed stop sign. *Fickling v. N.*, 294 NW848. See Dun. Dig. 41646.

Whether truck driver negligently drove his loaded gravel truck into intersection without stopping for stop sign and at a speed of from 30 to 40 miles an hour, held for jury. *Id.*

(b). Driver entering through highway where stop sign is erected may be found guilty of negligence in failing to yield right of way to an automobile approaching on through highway so closely as to constitute an immediate hazard. *Blom v. W.*, 296NW502. See *Dun. Dig.* 4164(f).

**2720-199. Driver entering highway shall yield right-of-way.**

Where defendant drove his car out of a private driveway hidden by box elder trees less than 100 feet in front of plaintiff's rapidly approaching car, defendant was guilty of negligence and plaintiff free of contributory negligence as a matter of law. *Behr v. S.*, 288NW722. See *Dun. Dig.* 4164f.

Motorist who suddenly drives onto a public highway from a private driveway in violation of plaintiff's right of way and under circumstances showing that a collision would result was guilty of negligence as a matter of law. *Boerner v. W.*, 289NW562. See *Dun. Dig.* 4164f.

Driver of heavy truck was entitled to assume that one approaching highway on a private road would yield right-of-way, at least until a reasonable basis to conclude the contrary appeared, and it was a question for jury to determine whether he was guilty of contributory negligence with respect to defendant who was having trouble to get his truck up steep slope to a level shoulder. *Salters v. U.*, 292NW760. See *Dun. Dig.* 4164f.

**2720-200. Emergency vehicle to have right-of-way.**

(a). In action for death of fireman in collision between fire truck and defendant's car at an intersection, negligence of defendant in driving car with windows closed and radio on and in failure to keep proper lookout and hear siren held for jury. *Anderson v. G.*, 288NW704. See *Dun. Dig.* 4164e.

In action for death of fireman riding on rear step of fire truck when it was struck at an intersection by defendant's automobile while he was driving with car window closed and radio on, it was error to submit question of emergency to jury in connection with negligence of defendant. *Id.* See *Dun. Dig.* 4173.

**ARTICLE X.—PEDESTRIANS' RIGHTS AND DUTIES**

**2720-202. Pedestrians' right and duties.**

In action for death, a workman putting out flares was guilty of contributory negligence as a matter of law in attempting after dark to pass across a pavement open for traffic in front of approaching car traveling with lights turned on, at a speed of not to exceed 30 miles an hour. *Hoelmer v. S.*, 290NW225. See *Dun. Dig.* 4171.

In action for wrongful death of pedestrian on highway, negligence and contributory negligence held for jury. *Ralston v. T.*, 292NW24. See *Dun. Dig.* 4171.

Where one defendant parked his gravel truck on right lane of a paved highway at night time without setting out flares for purpose of adjusting a loose board on end of truck, and plaintiff passenger and guest of such defendant, alighted for purpose of assisting and while standing on pavement back of rear right two wheels of truck was run into by automobile approaching from rear and driven by another defendant, issues of negligence of each defendant, its causal proximity, and plaintiff's contributory negligence, were all for the jury. *Anderson v. J.*, 294NW224. See *Dun. Dig.* 4167n.

**2720-203. Pedestrians to have right-of-way in certain cases.**

Contributory negligence of pedestrian crossing street and colliding with rear right side of defendant's car held for jury. *Repplinger v. H.*, 296NW23. See *Dun. Dig.* 4171.

(a). At an intersection where there is neither sidewalk or pathway actually in use and no crosswalk marked on pavement or determined by survey or otherwise, there is no "crosswalk." *St. George v. L.*, 296NW523. See *Dun. Dig.* 4171.

**2720-204. Pedestrians not crossing at crosswalks; etc.**

(d). Fact that automobile has right of way does not give driver right to proceed regardless of everything else, but he must observe care. *St. George v. L.*, 296NW523. See *Dun. Dig.* 4166.

**ARTICLE XII.—SPECIAL STOPS REQUIRED**

**2720-212. Railroad and warehouse commission to mark dangerous crossings.**

Absent unusual circumstances, failure of railway employees to anticipate that automobile would enter crossing without stopping is not evidence of negligence. *Engberg v. G.*, 290NW579. See *Dun. Dig.* 8183.

**2720-216. Shall stop before reaching sidewalks.**

Requirement that a driver emerging from an alley stop carries with it implied duty on his part of using his senses of sight and hearing to ascertain that way is clear before entering highway, and this applies to a minor riding a bicycle. *Nowrey v. S.*, 296NW(1a)822.

Requirement that a driver emerging from an alley stop before crossing sidewalk was designed for benefit of traffic of every kind, and not merely pedestrians on sidewalks. *Id.*

**ARTICLE XIII.—STOPPING, STANDING AND PARKING**

**2720-217. Stopping, standing and parking.**

Regardless of statute pertaining to use of flares by one stopping truck on paved portion of highway, truck driver was required to use ordinary care commensurate with risks involved. *Anderson v. J.*, 294NW224. See *Dun. Dig.* 4171a.

**2720-220. Parking on roadway.**

It does not appear that fee of five cents, to be charged for parking regulated by meters, so much exceeds cost of installation, maintenance and regulation of meters as to result in a tax and condemn whole project as for revenue rather than regulation. *Hendricks v. C.*, 290NW 428. See *Dun. Dig.* 4171a.

Commissioner's power to establish or refuse to establish angle-parking zone is a constitutional delegation of power by legislature. *Op. Atty. Gen.*, (989a-16), Sept. 26, 1939.

Angle-parking on state truck highways in cities is permissible only with consent of Highway Commissioner, regardless of charter provision giving city control over city streets. *Id.*

Local bodies may regulate angle or parallel parking on streets and roadways other than state trunk highways without approval of state highway commissioner. *Op. Atty. Gen.* (989-a-16), Nov. 29, 1940.

**ARTICLE XIV.—MISCELLANEOUS RULES**

**2720-230. Passing school busses.**

(a). This subdivision and a rule made under it do not apply within business or residential district of any city, town, or village. *Op. Atty. Gen.*, (989a-21), Oct. 6, 1939.

**ARTICLE XV.—EQUIPMENT**

**2720-234. Vehicle lights.**

Negligence of one driving a team and wagon after dark without a light or reflector, in consequence of which driver approaching from rear did not see wagon until 10 or 15 feet away and then had to turn abruptly to left, lost control and turned over, is a fact question. *Smith v. C.*, 296NW132. See *Dun. Dig.* 4167q.

**2720-239. Lights for parked vehicles.**

Where one defendant parked his gravel truck on right lane of a paved highway at night time without setting out flares for purpose of adjusting a loose board on end of truck, and plaintiff passenger and guest of such defendant alighted for purpose of assisting and while standing on pavement back of rear right two wheels of truck was run into by automobile approaching from rear and driven by another defendant, issues of negligence of each defendant, its causal proximity, and plaintiff's contributory negligence, were all for the jury. *Anderson v. J.*, 294NW224. See *Dun. Dig.* 4171a.

**2720-241. Horse drawn vehicles must have lights.**

Negligence of one driving a team and wagon after dark without a light or reflector, in consequence of which driver approaching from rear did not see wagon until 10 or 15 feet away and then had to turn abruptly to left, lost control and turned over, is a fact question. *Smith v. C.*, 296NW132. See *Dun. Dig.* 4167c.

**2720-257. Horns.**

It is for jury to determine whether or not it is contributory negligence to drive a motor cycle without sounding horn at a speed of 30 to 40 miles an hour up to an intersection protected by stop sign when first view cyclist has of intersecting road cannot be had before he is in two rods of intersection. *Pickling v. N.*, 294NW 848. See *Dun. Dig.* 4164e.

**ARTICLE XVII.—PENALTIES**

**2720-281. Penalties.**

Violation of §2720-212 is a misdemeanor to be considered in determining whether train crew is guilty of any negligence in assuming that automobile will stop at crossing. *Engberg v. G.*, 290NW579. See *Dun. Dig.* 8183.

**ARTICLE XVIII.—PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL CASES**

**2720-282. Who may be guilty of offenses.**

Violations of Uniform Traffic Act are crimes, including aiding and abetting. *Op. Atty. Gen.* (605B), Mar. 3, 1941.

**2720-284. Procedure upon arrest.**

A village justice of the peace has no jurisdiction over offenses committed outside village except where there is no magistrate within the town where the offense was committed, and in such instance accused may be brought before any magistrate within the county in which the offense is alleged to have been committed. *Op. Atty. Gen.*, (989a-8), Nov. 27, 1939.

Inmates of a National Youth Administration Camp while driving government trucks are not employees the United States and may be arrested for violation of highway laws in same manner as other persons. Op. Atty. Gen., (989a), April 17, 1940.

ARTICLE XIX.—EFFECT OF AND SHORT  
TITLE OF ACT

**2720-291. Effect and interpretation of law.**

Negligence of one driving a team and wagon after dark without a light or reflector, in consequence of which driver approaching from rear did not see wagon until 10 or 15 feet away and then had to turn abruptly to left, lost control and turned over, is a fact question. *Smith v. C.*, 296NW132. See Dun. Dig. 4167q.

(b).  
It is for jury to determine whether or not it is contributory negligence to drive a motorcycle at a speed of 30 to 40 miles an hour up to an intersection protected by stop sign when first view cyclist has of intersecting road cannot be had before he is in two rods of intersection. *Fickling v. N.*, 294NW848. See Dun. Dig. 4164e.

Whether it was negligence as to a guest to drive in nighttime at speed of 30 to 35 miles per hour more than 3½ miles over a paved highway on which there were patches of ice which were difficult to see because of occasional snow flurries, and car skidded on ice patch and hit telephone pole, held for jury. *Schultz v. R.*, 296NW532. See Dun. Dig. 4167e.

CHAPTER 14

Education

**2741. Public schools—Tuition free—Age of pupils.**

[Repealed.]

Repealed. Laws 1941, c. 169 except as provided therein. Reenacted as 3156-12(1).

Where voters of school district voted to exclude children of orphan home from school, and school board acted thereon, board was proper party defendant in action in mandamus to compel admission of children to school. *State v. School Board of Consol. School Dist. No. 3*, 287 NW625. See Dun. Dig. 8660.

Word "resides" is used in broad sense of being an inhabitant as distinguished from more restricted sense of domicile, and children of proper age inhabiting an orphan home in a school district are entitled to free education therein. *Id.* See Dun. Dig. 8660.

School board, having refused resident children of proper age admission to its school, is a proper party to mandamus proceedings to enforce rights of children to free education. *Id.* See Dun. Dig. 8698.

British refugee children have privilege of attending public schools free of tuition in district where they are residing. Op. Atty. Gen. (180-G), July 24, 1940.

**2742. School districts. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(1).

**2743. Formation of districts. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(5).

**2744. Petition. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(6).

**2745. Notice of hearing. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(7).

**2746. Proceedings on hearing. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(8).

**2747. Appeal from order. [Repealed.]**

Repealed. Laws 1941, c. 169 except as provided in repealing act. Reenacted as 3156-3(32).

**2748. Changing boundaries of school districts. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided in repealing act. Reenacted as 3156-3(9); 3156-3(10); 3156-3(11); 3156-3(12).

Land detached from one district and added to another is not subject to any levy for general expenses in old district from that time on, but is subject to such levy as is necessary to retire principal and interest of outstanding bonds, and conversely should be exempt from levy for debt or bonds of new district existing prior to change, but is liable for levy for general expenses and maintenance. Op. Atty. Gen., (166c-5), Nov. 14, 1939.

Bonds are an obligation upon all of land which was in school district at time bonds were issued, and land detached from one district and attached to another is not subject to tax to meet bonds issued by district to which attached before it became a part of such district. Op. Atty. Gen., (166d-5), Jan. 11, 1940.

The fact that Duluth school district is coterminous with city limits, and fact that Duluth is a special district and has many special laws governing the same, would not invalidate proceedings to set off territory from city of Duluth to the Proctor school district, but county commissioners in acting on a petition could consider all of special laws in considering effect on welfare of that district, granting of petition resting in discretion, and best judgment of county board. Op. Atty. Gen. (166c-9), May 31, 1940.

Lands under water, highways and tax forfeited lands are not to be excluded in computing four sections of land. Op. Atty. Gen. (166c-2), July 8, 1940.

It is impossible for any territory to become a part of school district for Minneapolis without being annexed to that city for all purposes. Op. Atty. Gen. (59a-42), Oct. 10, 1940.

County board has no authority to change boundaries of 2 adjoining school districts without application or petition from freeholders or individual landowners affected, since they are mutual obligation of school boards of two districts and without vote of people. Op. Atty. Gen. (166d-8), Feb. 18, 1941.

**2748-1. Platted territory annexed to and included in corporate limits; etc. [Repealed.]**

Repealed. Laws 1941, c. 169 except as provided in repealing act.

**2750. Districts in two or more counties. [Repealed.]**

Repealed. Laws 1941, c. 169, except as provided therein. Reenacted as 3156-3(14).

**2753. Dissolution of school districts. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(28).

Last sentence. Reenacted as 3156-4(42) in part.

**2754. Procedure for consolidation of school district. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(18); 3156-3(19).

**2755. Certain districts to receive aid as consolidated districts. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(24) in part and 3156-9(7) subd. 1 in part.

**2756. Petition for formation; etc. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(20); 3156-3(21).

**2757. Liability of common school district. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(21); 3156-3(22); 3156-3(23).

**2758. Consolidation of districts having an area of one square mile; etc. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(21) in part and 3156-3(23) in part.

**2759. Consolidation with unorganized districts. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(21) in part.

**2760. Certificate of officers. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-3(23) in part.

**2761. Powers of consolidated boards. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-6(9), subd. 1.

**2762. Requirements for receiving state aid. [Repealed.]**

Repealed. Laws 1941, c. 169.

Reenacted as 3156-9(7), subd. 1 in part.

**2763. Qualifications of principal. [Repealed.]**

Repealed. Laws 1941, c. 169.